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15 Energy Suppliers  
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16 MidAmerican Energy Company, Peoples  
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17 US Energy Savings Corp.)

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8 FOLEY & LARDNER, by  
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15 MR. ROBERT KELTER  
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28 SULLIVAN REPORTING COMPANY, by  
29 Steven T. Stefanik, CSR  
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31 Amy Aust, CSR

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1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>Examiner</u>	Re-	Re-	By
3	BRIAN JANOUS								
4	MICHAEL GORMAN	1941	1942						
5		1960	1963						
6	RONALD LINKENBACK		1990				2051		2046
7	ALLAN FERNANDES & PETER	2062	2064	2081					
8	LAWRENCE ALONGI & TIMMOTHY	2086	2095	2101	2111				
9		2119	2132	2138	2151				
10	PAUL R. CRUMRINE			2156	2161				
11		2165	2168						
12			2177						
13			2184						
14			2218						
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	<u>E X H I B I T S</u>		
	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
	IIEC		
	#4.0		1942
	#3.0 & 7.0		1962
	STAFF CROSS		
	#9	1990	
	COMED		
	#21	2038	
	IIEC		
	#1	2054	2061
	#9.0,9.1,9.2,& 21.0		2083
	COMED		
	#28,44		2114
	CES		
	#1-12		2118
	CTA		
	#2	2119	2130
	COMED		
	#9.0,9.1,9.2,9.3,23.0		2168
	23.1,23.2,23.3,40.040.2		2168
	AG		
	#8	2209	
	#9	2213	
	#10	2215	

1 JUDGE DOLAN: All right. Good morning.

2 By the power and authority of the  
3 Illinois Commerce Commission, I call Docket  
4 No. 05-0597, Commonwealth Edison Company, proposed  
5 general increase in electric rates, general  
6 restructuring of rates, pricing, unbundling of  
7 bundled service rates and revisions of other terms  
8 and conditions of service to order.

9 Would the parties please identify  
10 themselves for the record.

11 MS. POLEK-O'BRIEN: Anastasia Polek-O'Brien,  
12 Richard Bernet for Commonwealth Edison Company.  
13 Also E. Glenn Rippie with the law firm of Foley and  
14 Lardner.

15 MR. FOSCO: Appearing on --

16 MS. POLEK-O'BRIEN: -- of Commonwealth Edison  
17 Company, and John Rooney, law firm of Sonnenschein,  
18 Nath and Rosenthal.

19 MR. FOSCO: Appearing on behalf of Staff of the  
20 Illinois Commerce Commission, Carmen Fosco, John  
21 Feeley, Sean Brady, and Carla Scarsella, 160 North  
22 LaSalle Street, Suite C-800, Chicago, Illinois

1 60601.

2 MR. REDDICK: Appearing for the Illinois  
3 Industrial Energy Consumers, Eric Robertson and  
4 Ryan Robertson of the Lueders, Robertson and  
5 Konzen, and Conrad R. Reddick.

6 MR. GARG: On behalf of the People of the State  
7 of Illinois, Rishi Garg and Mark Kaminski of the  
8 Office of the Attorney General, 100 West Randolph,  
9 Floor 11, Chicago, Illinois 60601.

10 MS. PUSEMP: On behalf of the Building Owners  
11 and Manager's Association of the Chicago, Christina  
12 Pusemp (phonetic), Patrick Giordano and Paul Neilan  
13 of Giordano and Neilan, 360 North Michigan Avenue,  
14 Chicago, Illinois 60601.

15 MR. GOLDENBERG: On behalf of the Cook County  
16 State's Attorney's Office, Allan Goldenberg,  
17 Assistant State's Attorney, 69 West Washington,  
18 Suite 3130, Chicago, Illinois, 60602.

19 MR. GOLLOMP: Appearing on behalf of the United  
20 States Department of Energy, Lawrence A. Gollomp,  
21 1000 Independence Avenue, Southwest, Washington,  
22 D.C. 20585.



1                   Thank you.

2           MR. BORDERS:  On of behalf of the Coalition of  
3   Energy Suppliers William Borders and Christopher  
4   Townsend, DLA Piper, Rudnick, Gray, Cary, 203 North  
5   LaSalle, Chicago, Illinois 60601.

6           MR. NICKERSON:  On behalf appearing on Citizens  
7   Utility Board, Melville Nickerson, Julie Soderna  
8   and Robert Kelter 208 South LaSalle Street.  1760  
9   is the suite.  Chicago, Illinois 60603.

10          JUDGE DOLAN:  All right.  Let the reflect there  
11   are no another appearances.

12                   Mr. Reddick, I think you're up.

13          MR. REDDICK:  Good morning, your Honors.  IIEC  
14   calls Mr. Brian Janous.

15          JUDGE DOLAN:  Mr. Janous, would you please raise  
16   your right hand.

17                               (Witness sworn.)

18          JUDGE DOLAN:  All right.

19                   Proceed, Counsel.

20

21

22

1                   BRIAN JANOUS,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:

4                   DIRECT EXAMINATION

5                   BY

6                   MR. REDDICK:

7       **Q.**     Mr. Janous, did you prepare in this docket  
8   a single exhibit captioned Direct Testimony of  
9   Brian A. Janous and labeled IIEC Exhibit 4.0?

10      **A.**     Yes, I did.

11      MR. REDDICK: Your Honor, that exhibit has been  
12   filed on the Commission's eDocket system. It was  
13   filed the 23rd of December, 2005, and the docket  
14   number was 65372.

15      BY MR. REDDICK:

16      **Q.**     Mr. Janous, is that exhibit the testimony  
17   you intend to adopt as your sworn testimony here  
18   today?

19      **A.**     Yes, it is.

20      MR. REDDICK: Your Honors, I move the admission  
21   of IIEC Exhibit 4.0.

22      JUDGE DOLAN: Any objections.

1 MR. RIPPIE: None.

2 JUDGE DOLAN: All right. IIEC Exhibit 4.0 will  
3 be admitted into the record.

4 (Whereupon, IIEC  
5 Exhibit No. 4.0 was  
6 admitted into evidence as  
7 of this date.)

8 MR. REDDICK: The witness is available for  
9 cross-examination.

10 CROSS-EXAMINATION

11 BY

12 MR. RIPPIE:

13 Q. Good morning, Mr. Janous. My name is Glenn  
14 Rippie, and I am one of the attorneys for ComEd and  
15 I'll be asking you, I hope, about 20 minutes of  
16 questions this morning.

17 My first question may be my easiest.  
18 All other things being equal, would you agree that  
19 as a company's risk increases, the cost of capital  
20 that the market requires for that company also  
21 increases?

22 A. All things being equal, yes.

1       **Q.**     Now, you testify on Lines 22 through 23 of  
2     your testimony that a business profile score is a  
3     ranking assigned which S&P as a means of  
4     quantifying business or operating risk.

5                     You see that?

6       **A.**     Yes.

7       **Q.**     And on the following lines, that S&P in  
8     developing that score considers qualitative  
9     business or operating risk characteristics, right?

10      **A.**     That's correct.

11      **Q.**     And those considerations would include the  
12     situations and circumstances in the markets in  
13     which the utility sells its services?

14      **A.**     I would include those, yes.

15      **Q.**     The conditions in the markets in which the  
16     utility buys the products and services that it  
17     uses?

18      **A.**     Yes, I would include that.

19      **Q.**     The quality and costliness and efficiency  
20     of the utility's operations?

21      **A.**     Yes, I would include that as well.

22      **Q.**     And the regulatory regime in which the

1 utility functions?

2 A. Correct.

3 Q. And companies with comparable scores are  
4 likely to be more comparable than others on those  
5 criteria in the view of S&P, right?

6 Let me ask the question a different way.

7 A. Okay.

8 Q. If I took a set of utilities with the same  
9 business profile score, the reason presumably S&P  
10 assigns the same score is because it regards those  
11 companies as being similar when evaluated under the  
12 totality of those criteria?

13 A. Under the totality, yes.

14 Q. Now, would you agree that S&P's  
15 consideration of regulation includes whether the  
16 utility can be expected to receive a fair return on  
17 its rate base?

18 A. Yes.

19 Q. And would you also agree that regulation is  
20 the most important factor affecting T&D companies'  
21 credit quality because it provides the means by  
22 which a utility can realize predictable and stable

1 financial results?

2       **A.**     I would agree that it's a very significant  
3 factor, yes.

4       **Q.**     Do you know whether the words I read to  
5 you, in fact, appear in the S&P March 11th, 2004  
6 publication that you cite at Lines 36 through 37 of  
7 your direct testimony?

8       **A.**     I don't know if those appear word for word.

9       **Q.**     Will you agree with me then, in general,  
10 that S&P believes that regulation is the most  
11 important factor affecting T&D companies' credit  
12 quality?

13       **A.**     I would agree with that part.

14       **Q.**     Now, would you also agree that S&P reviews  
15 the capital structure of the utility employed to  
16 arrive at the regulated rate of return?

17       **A.**     Yes, I would agree with that.

18       **Q.**     And that in analyzing any rate case, S&P  
19 explores whether prices are based on a rate of  
20 return consistent with the Company's actual returns  
21 and with those of peers of similar credit quality?

22               I think that's on Page 4 of the S&P

1 document.

2       **A.**     Yes, I would agree with that.

3       **Q.**     Now, you testify at Lines 61 through 64 of  
4 your direct testimony that supply volume and price  
5 risk is typically the result of default or  
6 provider-of-last-resort obligations. However,  
7 these risks can be mitigated by a regulatory  
8 environment that allows for timely recovery of  
9 costs associated with these services; is that your  
10 testimony?

11       **A.**     That is my testimony.

12       **Q.**     Okay. If I call provider-of-last-resort  
13 obligations POLR for short, will you understand  
14 what I mean?

15       **A.**     Yes, I will.

16       **Q.**     Now, would you agree that ComEd would be  
17 less risky, therefore, if its rates removed its  
18 exposure to POLR volume and price risk?

19       **A.**     Yes, I would agree with that.

20       **Q.**     And uncertainty on the other hand in its  
21 exposure to POLR and price risk would increase its  
22 business risk, right?

1       **A.**     Yes, it would.

2       **Q.**     And all other things being equal, that

3       increase in business risk would increase its cost

4       of capital?

5       **A.**     Yes, potentially.

6       **Q.**     Well, all the other things being equal, it

7       would increase its cost of capital, wouldn't it?

8       **A.**     All things being equal, yes.

9       **Q.**     And if it increased its cost of capital,

10      all things being equal, customers would pay higher

11      rates?

12      **A.**     All things being equal, yes.

13      **Q.**     Now, in your view, should ComEd be entitled

14      to a regulatory environment that allows it to

15      mitigate its POLR volume and price risk?

16      **A.**     I do.

17      MR. REDDICK:   Withdrawn.

18                   I believe he answered it.

19      MR. RIPPIE:    Oh, I'm sorry.   I just didn't hear

20      the answer.

21      THE WITNESS:   Would you ask the question again?

22      BY MR. RIPPIE:



1       **Q.**     Sure.   Should ComEd, in your view, be  
2   entitled to a regulatory environment that, I think  
3   your word was mitigates its POLR volume and price  
4   risk?

5       **A.**     I think it would be a benefit to the  
6   ratepayers, yes.

7       **Q.**     Now, you testify on Lines 66 -- my notes  
8   say 66 through 65, so I hope I meant to say 65  
9   through 66 -- that, quote, S&P noted that clear  
10   separation between T&D utilities and their parent  
11   companies' unregulated affiliates results in a  
12   lower risk assessment.

13                   Did I read that correctly?

14       **A.**     Yes.

15       **Q.**     And, once again, a lower risk, all other  
16   things being equal, means a lower cost of capital  
17   and lower charges, right?

18       **A.**     Right.

19       **Q.**     Is it your position that ComEd's rates  
20   should be set in a matter financially distinct from  
21   the financial results of its unregulated affiliates  
22   and parents -- and parent?   Sorry.

1       **A.**     I don't believe I took a position on that  
2     in my testimony.

3       **Q.**     But you do testify that a separation would  
4     reduce risk.

5                     So my question is to you now, is it your  
6     view that that would be a good thing, to keep the  
7     risk down?

8       MR. REDDICK:   I'm going to object as outside the  
9     scope of Mr. Janous' testimony.  He presents  
10    certain metrics from Standard and Poors.  He  
11    explains them, but he doesn't express judgments or  
12    opinions that Mr. Rippie's trying to investigate.

13       MR. RIPPIE:   Well, I think it's fair cross.  If  
14    there's concern, I'd be happy to lay a couple  
15    foundation questions that might --

16       JUDGE DOLAN:   Why don't you do that then,  
17    Counsel.

18       MR. RIPPIE:   Sure.

19       JUDGE DOLAN:   Thank you.

20    BY MR. RIPPIE:

21       **Q.**     Do you believe ComEd's existing rates that  
22     would influence its current business profile score

1 about which you testify are based on its own  
2 financial condition separate from those of  
3 unregulated affiliates or its parent?

4 MR. REDDICK: Again, I object as outside the  
5 scope. Mr. Janous presents the S&P conclusions.  
6 He did not purport to investigate ComEd's  
7 circumstances.

8 MR. RIPPIE: I completely disagree. He  
9 discusses that ComEd is a four and compares that to  
10 generating companies and integrated utilities and  
11 discussions why, in his view, our business profile  
12 score is higher than most utilities.

13 I'm asking him whether, in his view, the  
14 rates which affect this scoring, in fact, reflect  
15 separation or not. That's --

16 JUDGE DOLAN: I'm going to overrule the  
17 objection.

18 THE WITNESS: Would you ask the question again?

19 BY MR. RIPPIE:

20 Q. Sure. Do ComEd's current rates on which  
21 S&P based its current profile score that you  
22 testified about, in your view, reflect a separation

1 between ComEd and its unregulated affiliates and  
2 parent?

3       **A.**     I believe Mr. Gorman addresses that in his  
4 testimony.

5               The only evidence that I would have that  
6 there is some sort of an effect is S&P's concern  
7 with respect to the P-Seg (phonetic) merger which  
8 seems to indicate some sort of downward pressure on  
9 ComEd's credit rating. That would lead me to the  
10 conclusion that, yes, there is some effect of the  
11 parent company's operations on ComEd.

12       **Q.**     Are you aware that some parties have  
13 appealed the Commission's order in Docket 05-0159?

14       **A.**     Yes, I'm aware of that.

15       **Q.**     Do you have an opinion as to whether or not  
16 S&P has taken that appeal into consideration?

17       **A.**     Yes, they have taken that into  
18 consideration.

19       **Q.**     Now, would you also agree that S&P is aware  
20 of the current corporate form of ComEd, including  
21 the various actions to separate its corporate  
22 governance that were described in the testimony of

1 earlier ComEd witnesses?

2       **A.**     I've not read specifically where S&P has --  
3 has recognized that fact, no.

4       **Q.**     But in your experience, if disclosures are  
5 made to the public markets in SEC filings about  
6 significant aspects of corporate governance, you  
7 would expect S&P to be aware of them, right?

8       **A.**     I guess I don't have an opinion about that  
9 matter.

10       **Q.**     But, regardless, S&P has not altered its  
11 business profile score for ComEd in light of either  
12 the Commission's procurement order, the appeal  
13 thereof or any changes that may have occurred in  
14 corporate governance, right? Still a four.

15       **A.**     Is -- according to the latest business  
16 profiles score report that I've seen from S&P,  
17 they're still a four.

18       **Q.**     And is it also true that S&P continues to  
19 express concern about the risks related to ComEd's  
20 POLR obligations?

21       **A.**     Yes, that is true.

22       **Q.**     As late as one week ago, S&P issued a

1 report on that subject, didn't it?

2 A. Yes, they did.

3 Q. And that report specifically recognized and  
4 called out Illinois as an area -- as a state about  
5 which it was concerned -- let me try that question  
6 again.

7 That report specifically called out  
8 Illinois as a state by which S&P was concerned  
9 about POLR risk?

10 A. Yes.

11 Q. Now, you indicate at the very beginning of  
12 your direct testimony, Lines 15 and 16, that you  
13 compare ComEd's S&P business profile score to that  
14 of other transmission and distribution utilities,  
15 right?

16 A. Correct.

17 Q. And on Lines 19 and 20, you state that the  
18 business profile score is an important  
19 consideration in establishing the utility's capital  
20 structure, right?

21 A. Yes.

22 Q. And that is because, as we discussed

1 earlier, it's a roll-up of a variety of risks that  
2 affect the utility's cost of capital?

3 **A.** Correct.

4 **Q.** For a given bond rating, would you agree  
5 that different levels of leverage are tolerable by  
6 the markets depending upon the business profile  
7 score?

8 **A.** Yes, I would agree with that.

9 **Q.** And its inverse, the higher the business  
10 profile score, the riskier the company is and the  
11 less leverage is tolerable, right?

12 **A.** That's consistent with S&P's guidelines.

13 **Q.** Now, S&P also considers financial risk,  
14 doesn't it?

15 **A.** Yes, it does.

16 **Q.** And financial risk is quantified using  
17 various ratios such as the debt ratio?

18 **A.** Yes.

19 **Q.** And the debt ratio is obviously directly  
20 affected by the capital structure because the debt  
21 ratio is defined as the ratio of debt to total  
22 capital, right?

1       **A.**     Right.

2       **Q.**     And would you agree that the capital  
3     structure employed, in turn, affects a utility's  
4     revenue?

5       **A.**     I'm sorry.  What was the question again?

6       **Q.**     The capital -- well, I'll make it longer.

7               The capital structure employed to arrive  
8     at a rate will, in turn, affect the utility's  
9     revenue?

10       MR. REDDICK:  Objection.  Mr. Janous has no rate  
11     making testimony.

12       MR. RIPPPIE:  Well, if you can allow me just one  
13     question, the next question is -- it's a lead-in to  
14     the next question which asks about the other  
15     financial metrics.  And --

16       MR. REDDICK:  (Inaudible) -- at the end.

17     BY MR. RIPPPIE:

18       **Q.**     Well, okay.  I'll ask it all in one  
19     question.

20               Would agree that capital structure  
21     employed by regulators affects revenue which, in  
22     turn, affects the other two financial metrics that



1 S&P cites, FFO interest coverage and FFO debt  
2 coverage?

3 A. Let me make -- just --

4 Q. I'm happy to break it up, if your lawyer  
5 will let me.

6 Let me -- I'll try it again, okay?

7 A. Okay.

8 Q. There are other metrics called FFO interest  
9 coverage and FFO debt coverage, right?

10 A. Right.

11 Q. FFO stands for funds from operations,  
12 right?

13 A. Correct.

14 Q. And FFO debt coverage compares the funds of  
15 operations to the total amount the debt?

16 A. Yes.

17 Q. And FFO interest coverage compares the  
18 funds from operations to the amount of interest  
19 expense. I've over-simplified, but that's, in  
20 essence, the --

21 A. In essence.

22 Q. -- the concept.

1                   Okay. To the extent that capital  
2 structure affects a utility's revenue stream,  
3 capital structure will also affect those two  
4 metrics, right?

5       **A.**     Right.

6       **Q.**     Okay. Last area.

7                   Now, would you agree with me that  
8 ComEd's business profile score of four is not rare  
9 amongst gas and electric T&D utilities?

10      **A.**     It is not rare, no.

11      **Q.**     It's the third most common score, right?

12      **A.**     Yes, I would agree with that.

13      **Q.**     Would you also agree that fully half of the  
14 surveyed utilities are either fours or within one  
15 number of four, i.e., between three and five?

16      **A.**     I haven't done that calculation.

17      **Q.**     Well, if you look at your chart, your  
18 Table 1 --

19      **A.**     That would be in the ballpark, yes.

20      **Q.**     Okay. And whether or not a particular  
21 utility falls above or below four would depend on  
22 those same risk factors that we talked about at the

1 very beginning of our discussion, right?

2 **A.** Right.

3 **Q.** Okay. Last couple questions.

4 You testified that generation utilities,  
5 in your view, generally have higher risk profile  
6 scores, right.

7 **A.** S&P generally assigns higher business  
8 profile scores to integrated utilities; yes, I did  
9 testify to that.

10 **Q.** But there's nothing special about the fact  
11 that they're generation utilities. S&P is basing  
12 its scoring on those factors, right?

13 There's no sort of magic thumb on the  
14 scale if you have generation?

15 **A.** Well, the fact that there is generation  
16 ownership adds a degree of risk. So I would say  
17 that, in fact, there is a significant distinction  
18 there between owning generation and not.

19 **Q.** Let me be clear because I'm not sure we're  
20 disagreeing at all.

21 The reason, in your view, that the  
22 generation utilities have higher scores is because

1 S&P has concluded that they have higher market  
2 risk, higher operating risk or higher regulatory  
3 risk, not because S&P has some factor that says if  
4 you're a generation company, you get hammered  
5 worse; right?

6 **A.** Yes, I would agree with that.

7 MR. RIPPIE: Okay. Thanks very much.

8 THE WITNESS: Thank you.

9 JUDGE DOLAN: Any redirect?

10 MR. REDDICK: None.

11 JUDGE DOLAN: Okay.

12 Thank you, Mr. Janous.

13 THE WITNESS: Thank you.

14 JUDGE DOLAN: All right.

15 Counsel, procedure seed.

16 MR. REDDICK: The Illinois Industrial Energy  
17 Consumers call Mr. Michael Gorman.

18 JUDGE DOLAN: Good morning, Mr. Gorman. Please  
19 raise your right hand.

20 (Witness sworn.)

21 JUDGE DOLAN: Thank you.

22

1                   MICHAEL GORMAN,  
2   called as a witness herein, having been first duly  
3   sworn, was examined and testified as follows:

4                   DIRECT EXAMINATION

5                   BY

6                   MR. REDDICK:

7       **Q.**    Mr. Gorman, have you prepared for this  
8   docket an exhibit titled Direct Testimony and  
9   Schedules of Michael Gorman that has been  
10  designated IIEC Exhibit 3.0?

11       **A.**    Yes.

12       **Q.**    And does that exhibit include an Appendix A  
13  which lays out your qualifications?

14       **A.**    Yes.

15       **Q.**    Have you also prepared an exhibit titled  
16  Rebuttal Testimony and Exhibits of Michael Gorman  
17  that has been labeled IIEC Exhibit 7.0?

18       **A.**    Yes.

19       **Q.**    And attached to that testimony, are there  
20  exhibits numbered 7.1 through 7.4?

21       **A.**    Yes.

22       **Q.**    And with respect to your direct testimony,

1 have you recently filed an errata?

2 **A.** I did.

3 MR. REDDICK: Your Honor, the direct testimony  
4 of Mr. Gorman, IIEC Exhibit 3.0, was filed on the  
5 Commission's eDocket system December 23, 2005,  
6 Docket No. 65390.

7 His rebuttal testimony, IIEC  
8 Exhibit 7.0, along with the Exhibits 7.1 through  
9 7.4 were filed February 27th, 2006 and Docket  
10 No. 67517. And the errata was filed on March 27,  
11 2006, document No. 68508.

12 BY MR. REDDICK:

13 **Q.** Mr. Gorman, are the exhibits that I've just  
14 described the ones that you adopt as your sworn  
15 testimony today?

16 **A.** Yes.

17 **Q.** Do you have any further corrections to  
18 those exhibits?

19 **A.** No.

20 MR. REDDICK: Your Honor, I move the admission  
21 of Exhibit 3.0 and 7.0, along with Exhibit 7.1  
22 through 7.4, as corrected by the errata filed

1 March 27, 2006.

2 JUDGE DOLAN: Any objection?

3 MS. POLEK-O'BRIEN: No objection.

4 JUDGE DOLAN: Okay. Then IIEC Exhibit 3.0 will  
5 be admitted into the record. IIEC Exhibit 7.0  
6 along with Exhibit 7.1 through 7.4 will be admitted  
7 into the record, and the errata -- was that of the  
8 direct testimony?

9 MR. REDDICK: Yes, it was.

10 JUDGE DOLAN: Okay -- filed on 3/27/06 will also  
11 be admitted into the record.

12 (Whereupon, IIEC  
13 Exhibit Nos. 3.0 and 7.0 were  
14 admitted into evidence as  
15 of this date.)

16 MR. REDDICK: The witness is available for  
17 cross-examination -- I'm sorry, Mr. Fosco.

18 MR. FOSCO: Just one clarification. Carmen  
19 Fosco on behalf of Staff.

20 The errata is just a one page describing  
21 the corrections?

22 MR. REDDICK: The one page describing the

1 corrections to the direct testimony.

2 MR. FOSCO: Thank you.

3 JUDGE DOLAN: Okay. Thank you.

4 CROSS-EXAMINATION

5 BY

6 MR. FOSCO:

7 Q. Good morning, Mr. Gorman.

8 A. Good morning.

9 Q. My name is Carmen Fosco. I'm one of the  
10 attorneys representing Staff and I have a few  
11 questions for you this morning.

12 The first subject I'd like to cover is  
13 your testimony regarding the environmental cost  
14 recovery rider.

15 A. Okay.

16 Q. On Pages 51 through 53 of your direct  
17 testimony, you address ComEd's proposal to  
18 implement Rider ECR, environmental cost recovery,  
19 to recover certain environmental costs after --  
20 after 2007, correct?

21 A. Yes.

22 Q. Okay. You further testify on Pages 51 to



1 52 of your direct testimony of ComEd's Rider ECR  
2 proposes to recover various costs including, and  
3 I'll quote from your testimony, direct fees,  
4 charges and billings and assessments, acquisition  
5 cost associated with remediation or environmental  
6 activities, litigation cost including judgments  
7 orders, decisions and settlements within a court or  
8 quasi-judicial body and legal litigation settlement  
9 costs and expenses concerning environmental  
10 activities or contamination.

11 Did I read that correctly?

12 A. Yes.

13 Q. Is it fair to characterize your testimony  
14 that you recommend rejection of the Company's  
15 proposed Rider ECR on two separate bases?

16 A. On two separate bases?

17 Q. (Nodding.) I can just walk through them,  
18 if you want. We can do it that way, if that's more  
19 comfortable.

20 A. Yeah.

21 Q. Am I correct that the first basis upon  
22 which you -- or at least -- let me put it another

1 way.

2 Am I correct that one of the bases upon  
3 which you recommend rejection of Rider ECR is that  
4 the company has not demonstrated the  
5 appropriateness of recovering those costs through a  
6 rider because it has not shown that the subject  
7 costs are volatile, beyond management's control or  
8 will inhibit the Company's ability to earn its  
9 authorized rate of return on equity?

10 A. In their direct testimony, yes, that's  
11 true.

12 Q. Okay. And am I correct that another basis  
13 upon which you recommend rejection of Rider ECR is  
14 that the automatic full pass-through of these costs  
15 to ratepayers will remove ComEd's economic  
16 incentive to control or minimize these costs from  
17 an economic perspective?

18 A. Yeah, particularly with respect to  
19 litigation fees.

20 Q. Do you agree that this last basis that we  
21 discussed is sometimes referred to as a moral  
22 hazard problem?

1       **A.**     The second reason?

2       **Q.**     Yes.

3       **A.**     A moral hazard problem?

4       **Q.**     Have you heard that issue or that problem  
5 described as moral hazard problem?

6       **A.**     I'm not familiar with that, no.

7       **Q.**     Okay. And if I understand your testimony  
8 correctly, your remedy to both of these issues is  
9 to recommend recovery of these costs through base  
10 rates; am I correct?

11       **A.**     Appropriate transmission and  
12 distribution-related costs from base rates, yes.

13       **Q.**     In making your recommendation, did you rely  
14 upon whether or not ComEd's proposed rider provides  
15 for prudence reviews of any sort?

16       **A.**     Well, I believe they are willing to  
17 withstand a prudence review.

18       **Q.**     But that doesn't change your  
19 recommendation; am I correct?

20       **A.**     That does not.

21               Now, I mean rates -- certain aspect of  
22 the regulatory bargain is that rates will be stable

1 and the Company gets an opportunity to fully  
2 recover its costs.

3 Implementations of riders which are not  
4 necessary to provide the utility a fair opportunity  
5 to earn its authorized rate of return will  
6 potentially destabilize rates, which is -- will  
7 potentially negatively impact customers of the  
8 utility.

9 Q. Okay. In recommending that certain costs  
10 be reinserted back into ComEd's Bates base rates in  
11 this proceeding, have you conducted an analysis or  
12 review of the prudence of the circumstances giving  
13 rise to the need for those costs?

14 A. I have not. I've simply observed what  
15 Mr. Hill pulled out of the Company's cost of  
16 service and commented on what he proposes to put  
17 back in in the event the rider recovery is not  
18 approved.

19 Q. Thank you.

20 Would your answer be the same if I  
21 focused on the reasonableness of the costs  
22 themselves?

1       **A.**     I've not done a reasonableness review or  
2 prudency review of the costs incurred.

3       **Q.**     Okay. Moving on to a new subject now.

4               At Pages 4 through 8 of your direct  
5 testimony, you generally discuss what you describe  
6 as electric utility industry market perspectives or  
7 perspectives specifically including a discussion of  
8 the relative risk of electric utilities with  
9 transmission and distribution operations or  
10 wires-only companies versus electric utilities with  
11 transmission, distribution and generation  
12 operations or integrated electric utilities; is  
13 that correct?

14       **A.**     Yes.

15       **Q.**     Do I understand your testimony to be that  
16 S&P and other credit analysts generally consider  
17 the operating risk for wires-only utilities to be  
18 lower than for integrated utilities?

19       **A.**     Generally speaking, yes.

20       **Q.**     Do I also understand your testimony to be  
21 that S&P, in assessing the overall financial risk  
22 of a -- of T&D utilities, gives consideration to

1 the corporate structure of the utility including --  
2 and I'm quoting from part of your testimony,  
3 whether unregulated activities of the parent affect  
4 the utility's credit profile?

5       **A.**     Yeah, that's a very -- very careful  
6 consideration, as I understand it S&P and other  
7 credit rating agencies make in assigning a  
8 utility's credit rating; that is, they --  
9 essentially, the isolation of the utility from  
10 affiliated companies, nonregulated affiliates.

11       **Q.**     Okay. And I just want to be sure I  
12 understand the scope of your testimony.

13               Are you taking a position as to whether  
14 ComEd's credit ratings have been affected by the  
15 unregulated activities of its corporate parent or  
16 is that something another witness handles?

17       **A.**     Well, I'm the one that reviewed that, and  
18 ComEd's credit rating is impacted by the total risk  
19 review of Exelon and all its affiliated companies.  
20 Standard and Poors clearly states that in its  
21 credit review of ComEd.

22               So -- so I have made that evaluation,

1 and ComEd's credit rating is impacted by its  
2 affiliation with Exelon and its unregulated  
3 subsidiaries.

4 **Q.** Is it impacted in a positive or a negative  
5 manner?

6 **A.** Well, I don't have the review from Standard  
7 and Poors that states what ComEd's rating would be  
8 on a stand-alone basis, but given the credit  
9 report's assessment that the stable cash flows of  
10 ComEd and PECO improve the stability of the cash  
11 flows for the entire enterprise. And they've  
12 quoted that the regulated operations are relatively  
13 low-risk operations in comparison to the  
14 consolidated enterprise.

15 And they've also noted that the business  
16 profile score of Exelon Corp is six and  
17 Commonwealth Edison and PECO are both four, which  
18 indicates lower operating risk than the  
19 consolidated operations.

20 All that leads me to believe that  
21 consolidated operation's credit profile was  
22 probably improved and the regulated credit profile

1 probably was worsened a little bit to levelize the  
2 same credit rating that S&P has assigned to all of  
3 the Exelon operating utility affiliates and the  
4 parent company.

5 Q. Thank you.

6 I'm now going to move on to a slightly  
7 different topic, which is your testimony regarding  
8 ComEd's capital structure for purposes of this  
9 proceeding.

10 A. Hm-hmm.

11 Q. Attached to your direct testimony is  
12 ComEd's response to data request IIEC 4.04,  
13 correct?

14 A. Yes.

15 MS. POLEK-O'BRIEN: Mr. Fosco, what number is  
16 that, what number attachment?

17 THE WITNESS: You said direct. That's attached  
18 to rebuttal.

19 MR. FOSCO: Oh, I'm sorry. Thank you. I  
20 misspoke.

21 BY MR. FOSCO:

22 Q. I'll note it says rebuttal in my notes.



1                   Okay. And that document is your IIEC  
2 Exhibit 7.1; is that correct?

3       **A.**     Yes.

4       **Q.**     Okay. That document contains an indication  
5 that -- in describing the purchase accounting  
6 adjustments, that after the common equity balance  
7 was reduced by 2.634 billion to recognize the fair  
8 value, the balance of common equity was then  
9 compared to the value of the consideration paid by  
10 the acquiring company. The difference, which in  
11 this case was 4.926 billion, was recorded as an  
12 increase in good will and a corresponding increase  
13 in common equity.

14                   Did I read that correctly?

15       **A.**     Yes.

16       **Q.**     Okay. And did you rely on those particular  
17 statements for the statements contained in your  
18 rebuttal testimony where you state the amount of  
19 good will?

20       **A.**     Well, I relied on that and Mr. Mitchell's  
21 and Ms. Houtsma's testimony.

22                   I would note that the 4.926 billion

1 dollars in good will noted here is the combination  
2 of several fair value asset adjustments that  
3 Mr. Mitchell details in his direct testimony, which  
4 include pension and OPEB assets, other assets as  
5 well as good will.

6 His 4.926 is the sum of those three fair  
7 value asset adjustments.

8 MR. FOSCO: Okay. May I approach the witness,  
9 your Honor?

10 JUDGE DOLAN: Yes.

11 BY MR. FOSCO:

12 Q. All right. Mr. Gorman, I'm not going to  
13 mark this as an exhibit. I'm just -- actually, for  
14 ease of questioning here, I've handed you Page 7 of  
15 10 from Mr. Mitchell's direct company ComEd  
16 Exhibit 7.0.

17 And you just described in your last  
18 answer Mr. Mitchell's description of the purchase  
19 accounting adjustments and related good will, and  
20 were you referring at least in part to the  
21 description on this page?

22 A. Yeah, I mean, there's -- this provides more

1 detail, the total sum of the fair value asset  
2 adjustment and common -- corresponding common  
3 equity adjustment, 4.926 billion. And it is the  
4 sum of pension OPP -- OPEB and severance of 144  
5 million, other assets, liabilities and long-term  
6 debt of 77 million, and good will net of  
7 amortization of 4,705,000,000.

8                   Those three items sum to 4.926 billion  
9 dollars.

10       **Q.**     So the 4.926 billion number is really, if  
11 you will, good will net of those other items that  
12 were adjusted as part of the purchase accounting?  
13 It's the sum of those numbers?

14       **A.**     It's -- yeah, it's -- what they call good  
15 will, including those other tangible assets items.

16       **Q.**     Thank you.

17       MR. FOSCO: Your Honor, may I approach the  
18 witness?

19       JUDGE DOLAN: Yes.

20       BY MR. FOSCO:

21       **Q.**     Mr. Gorman, I've handed you a document.  
22 I'm not going to mark --

1       MR. REDDICK:  Mr. Fosco, there are a lot of  
2       numbers here.  Could we have a moment to --

3       MR. FOSCO:  Sure.

4       MR. REDDICK:  Takes me longer than it takes  
5       Mr. Gorman.

6       THE WITNESS:  I've seen all these numbers many  
7       times before.

8       BY MR. FOSCO:

9       Q.     I'm glad to hear that.  That was my intent.

10               I'd like to walk through the numbers on  
11     this schedule and see if they're correctly stated  
12     and so we can understand the purchase accounting  
13     adjustments and reversals and its impact on ComEd's  
14     capital structure.

15     MS. POLEK-O'BRIEN:  I object.  This is clearly  
16     friendly cross.  You've got two parties that  
17     advocating the same position and are using this  
18     clearly as an opportunity to put in additional  
19     direct testimony.

20     MR. FOSCO:  Your Honor, I disagree.

21               I mean, this witness did adopt Staff's  
22     testimony, but I -- I think I'm entitled to clarify

1 the differences, and I think this is just fair  
2 cross. I'm not going to spend a lot of time on it  
3 and I think it's helpful to explain what's  
4 happening in this case.

5 MR. REDDICK: Your Honor, I know that this is an  
6 exhibit prepared by the Staff for cross. It's not  
7 anything I've seen before, although the numbers  
8 apparently are familiar to Mr. Gorman.

9 MR. FOSCO: I'll represent for the record, I  
10 haven't talked to Mr. Gorman or Mr. Reddick about  
11 this one bit.

12 MS. POLEK-O'BRIEN: I think that's irrelevant.

13 This is -- this is the position that's  
14 being advocated by both of these parties. They've  
15 each had two separate rounds of testimony --

16 MR. FOSCO: Well --

17 MS. POLEK-O'BRIEN: This is just being used as  
18 an opportunity to get in what they clearly could  
19 have both done before.

20 MR. FOSCO: Your Honor, that's not true. That's  
21 absolutely wrong.

22 Staff had no opportunity whatsoever to

1 respond to Mr. Gorman's testimony, and I think  
2 we're entitled to clarify the record. It's not  
3 friendly cross.

4 JUDGE DOLAN: I'm going to overrule, but we're  
5 going to limit it time-wise.

6 BY MR. FOSCO:

7 Q. Okay. Thank you.

8 Mr. Gorman, looking at Column A on the  
9 top half of this document, the numbers there come  
10 exactly from the page of Mr. Mitchell's testimony  
11 that we were looking at earlier. Would you agree  
12 with that?

13 A. Yes.

14 Q. Okay. And am I correct that it's ComEd's  
15 actual capital structure as of 6/30/05 reflects the  
16 prior effects of these purchase accounting  
17 adjustments, is that correct, before being  
18 adjusted?

19 A. ComEd's proposed common equity adjustment  
20 is based on a 2.292 billion dollar reduction in  
21 common equity as shown under Column A under the row  
22 entitled increased (decrease) to shareholder

1 equity.

2 Q. Okay.

3 A. I would note that ComEd, though, did not  
4 break it out as assets and liabilities as has been  
5 broken out here.

6 Q. Okay. But do you agree that that  
7 presentation is correct with the -- I'll note that  
8 Mr. Mitchell grouped other assets, other  
9 liabilities and long terms together and those are  
10 separate asset and liability items on the balance  
11 sheet?

12 A. What -- I'm sorry. Can you repeat that?

13 Q. Sure. If you look at Mr. Mitchell's  
14 testimony, he refers to other assets, liabilities  
15 and long-term debt of 77 million.

16 And would you agree that that amount is  
17 a net amount of certain asset and liability amounts  
18 on the balance sheet?

19 A. He doesn't define it, but I presume it is.

20 Q. Okay. And would you agree that the --  
21 well, I've cited the source --

22 A. Well, actually, let me back up a little

1 bit.

2                   If the conclusion by ComEd is that  
3 there's 4.926 billion dollars of effectively good  
4 will or tangible assets, then this schedule doesn't  
5 identify the total number of tangible assets and  
6 related common equity adjustment for that.

7       **Q.**     Okay.

8       **A.**     So it doesn't reconcile to the same 4.926  
9 billion that ComEd has stated represents the  
10 increase in common equity associated with the --

11       **Q.**     Okay.

12       **A.**     -- creation of good will.

13       **Q.**     It's probably what I wanted to clarify, and  
14 you've previously stated that the 4.926 is the  
15 combined amount of good will of 4,705,000,000,  
16 other liabilities and long term -- other assets,  
17 other liabilities and long-term debt of 77 million,  
18 and pension OPEB and severance of 144, correct?

19       **A.**     I'm saying that the -- that those line  
20 items total a 4.926 billion dollar increase in good  
21 will that -- that Commonwealth Edison has  
22 represented in discovery to be an increase in the



1 assets side of the balance sheet --

2 Q. Okay.

3 A. -- and related increase in common equity --

4 Q. Okay.

5 A. -- on the balance sheet.

6 Q. Okay.

7 A. This breakdown is something I haven't

8 looked at and I can't attest to the correctness of

9 these line items adjustments.

10 Q. Okay. But it is the breakdown in ComEd's

11 testimony, correct, with your qualification that it

12 wasn't broken down as to --

13 A. I don't know it is. ComEd -- Mr. Mitchell

14 identified pension OPEB and severance of 144

15 million. He didn't state that that was an increase

16 in tangible asset or a degrees in liability.

17 This schedule identifies it as a

18 decrease in a liability.

19 Q. Okay. If we go to Column B, ComEd has

20 proposed to decrease shareholders's equity to

21 account for the effects of purchase accounting in

22 the amount of 2,292,000,000, correct?

1       **A.**     Yeah, 2,292,000,000. Correct. I think  
2 these numbers are in millions.

3       **Q.**     And then Column C reflects what that  
4 adjustment -- it shows that -- the bottom half of  
5 the schedule shows the adjustment to capital  
6 structure, correct, after effecting the  
7 2,292,000,000 adjustment?

8       **A.**     Yes.

9       **Q.**     Okay. Now, you have adopted in your  
10 rebuttal testimony the direct testimony  
11 recommendations of Staff Witness Kight; is that  
12 correct?

13       **A.**     Yes.

14       **Q.**     And you agree that Staff Witness Kight  
15 proposed to undue the adjustments related to the  
16 transfer of plant?

17       **A.**     It was my understanding that Ms. Kight was  
18 attempting to identify out of the total capital  
19 included on ComEd's balance sheet how much of that  
20 capital supports transmission and distribution  
21 utility operations.

22                   I'm paraphrasing her testimony, but that

1 was my understanding of her testimony.

2 Q. Do you have a copy of her testimony in  
3 front of you?

4 A. I do not. I can get a copy.

5 Q. Okay. If I could refer you to the top of  
6 Page 6 of Ms. Kight's direct testimony, ICC Staff  
7 Exhibit 4.0.

8 A. I'm sorry. What page are you on?

9 Q. Page 6.

10 A. Okay.

11 Q. Do you see where she states that the  
12 adjustment to ComEd's proposed balance of common  
13 equity should be increased by the 4.791 billion  
14 dollar plant write-down, less the 2.157 billion  
15 reduction to deferred income taxes and ITCs or  
16 approximately 2.6 billion?

17 A. Yes.

18 Q. Okay. Do you agree that that's what's  
19 reflected on the top half of Column D, the reversal  
20 of the plant write-down of 4.791 billion and the  
21 reduction to deferred income taxes and ITCs of  
22 2.157 billion?

1       **A.**     Yes.

2       **Q.**     And that results in 2.634 billion reduction  
3     to shareholder's equity, correct?

4       **A.**     Correct.

5       **Q.**     Let's look at the bottom half.  We have  
6     Staff-proposed balances as of 6/30/2005, and we  
7     agree that the amounts there correspond to the  
8     amounts on Schedule 4.1?

9       MS. POLEK-O'BRIEN:  Objection.  We're going  
10    through -- we're apparently creating a table that  
11    Ms. Kight neglected to include in her testimony.  
12    This is absolutely friendly cross.

13       JUDGE DOLAN:  I'm going to sustain that one.

14    BY MR. FOSCO:

15       **Q.**     Now, Mr. Gorman, you state on Page 3 of  
16    your testimony that the primary capital structure  
17    issues separating ComEd and Staff relates to the  
18    amount of the common equity adjustment needed to  
19    remove good will from the Company's capital  
20    structure and related cost of service.

21       MR. REDDICK:  Is that direct or rebuttal?

22       MR. FOSCO:  That's Mr. Gorman's Exhibit 7, which

1 is his rebuttal.

2 THE WITNESS: Yes.

3 BY MR. FOSCO:

4 Q. Okay. Can you show me anywhere in Ms. --  
5 will you agree with me that -- or let me put it  
6 this way:

7 Can you identify in Ms. Kight's  
8 testimony where she specifically mentions good  
9 will?

10 A. No, I believe she talks about the common  
11 equity adjustments.

12 Q. But she doesn't mention specifically good  
13 will?

14 A. That's right.

15 Q. And would you agree that by the adjustment  
16 that Ms. Kight makes to ComEd's adjustment, she's  
17 not changing the good will amount. She's reversing  
18 the adjustments for the transfer of plant?

19 A. Yes.

20 Q. Would you agree that in this schedule  
21 that's reflected by looking at ComEd's adjustment  
22 for good will by Mr. Mitchell in Column A with the

1 acceptance of the reversal of that in Column B and  
2 there's no further adjustments shown?

3 **A.** It appears to reflect Ms. Kight's position.

4 **Q.** So when you stated that Ms. Kight and ComEd  
5 seemed to agree, were you stating that she didn't  
6 adjust ComEd's adjustment for the good will--  
7 strike that. Let me rephrase that.

8 Okay. If we isolate the adjustments in  
9 Ms. Kight's reversal for the -- related to transfer  
10 of plant -- strike that. Let me rephrase it.

11 I take it since you adopted her  
12 recommendation, that you agree that it's -- with  
13 her adjustment to reverse the adjustments related  
14 to the transfer of plant; is that correct.

15 **A.** Well, I adopted her position that it's  
16 appropriate to identify the amount of Commonwealth  
17 Edison's capital that supports its transmission and  
18 distribution utility assets.

19 She apparently went by identifying that  
20 amount of capital a little differently than I did,  
21 but we both ended up in the same place.

22 **Q.** What is the effect of the reversal that

1 Ms. Kight made and your acceptance of that in terms  
2 of its impact on ComEd's current capital structure  
3 supporting transmission and distribution  
4 operations?

5       **A.**     Well, the result of it is identifying out  
6 of all -- ComEd has about 11 -- over 11 billion  
7 dollars of capital on its balance sheet. It's got  
8 a little more than six billion dollars in rate  
9 base. So, clearly, there's a significant mismatch  
10 between the capital on the balance sheet and the  
11 amount of rate base.

12               That difference in -- from my  
13 perspective, that difference in the capital in rate  
14 base is largely attributable to almost a five  
15 billion dollar good will asset which is not the  
16 transmission and distribution utility asset. And  
17 that asset -- that good will asset is completely  
18 supported by common equity.

19               So the amount of capital -- ComEd's  
20 common equity in that 11 billion dollar capital  
21 component needs to be reduced by the value of that  
22 good will asset. That's supported only by common

1 equity or roughly five billion dollars -- or no,  
2 4.96 billion dollars.

3               So when you take ComEd's common equity  
4 and reduce it by 4.96 billion dollars of common  
5 equity and say that's supporting the good will  
6 asset and the remaining common equity is supporting  
7 transmission and distribution utility plant, then  
8 you get a capital structure that roughly matches  
9 rate base.

10               It's still a little more and it normally  
11 is; but the consequence of doing that allows you to  
12 identify out of all the capital in ComEd's balance  
13 sheet, how much is supporting transmission and  
14 distribution utility operations.

15               I got there by looking at the good will  
16 asset, recognizing that it's being supported by  
17 common equity, allocating that common equity to a  
18 good will asset and taking all the other capital  
19 and assigning it to transmission and distribution  
20 utility plant.

21               Apparently, Ms. Kight got there a  
22 slightly different way by starting with ComEd's



1 adjustment for the incremental increase in common  
2 equity caused by the push-down accounting, but then  
3 also subtracting out the amount of common equity  
4 that would be attributable to the nuclear station  
5 asset transfer.

6                   But we get to the very same point  
7 because the sum of the incremental increase in  
8 common equity and the common equity attributable to  
9 the nuclear asset transfer equals the good will  
10 asset that I assert is not a transmission and  
11 distribution utility asset. It's funded entirely  
12 by common equity and that common equity then  
13 shouldn't be used in establishing the capital  
14 structure for transmission and distribution utility  
15 rates.

16       **Q.**     So the 4.926 billion adjustment that you  
17 support is equal to the 2.292 billion dollar  
18 adjustment that ComEd proposed plus an additional  
19 adjustment of 2.634 billion?

20       **A.**     That's the difference, yes.

21       MR. FOSCO: Your Honor, I have no further  
22 questions.

1                   I would move to mark this as ICC --  
2   well, I move for admission of this. And if we do,  
3   I'll -- if it's it allowed, I will identify it as  
4   ICC Staff Cross Exhibit 9, which I believe is our  
5   next number.

6           MS. POLEK-O'BRIEN: I'll object to that.

7                   What I understood Mr. Gorman's testimony  
8   couldn't vouch for the accuracy of it and, again,  
9   it's clearly friendly cross.

10          MR. FOSCO: Your Honor, I think this exhibit is  
11   demonstrative. It explains other numbers that are  
12   already in the record and I think it's useful to  
13   understanding this issue.

14          JUDGE DOLAN: Okay. Since he can't verify the  
15   numbers, we're going to reject that exhibit.

16          MR. FOSCO: Thank you.

17          MR. REDDICK: Your Honor, did we use the No. 9  
18   and not admit or --

19          MR. FOSCO: I guess that would be to the right  
20   way to do it. I'll tender to the court reporter --

21          JUDGE DOLAN: I think we're going to have to  
22   mark it as the next exhibit and reject it.

1 (Whereupon, Staff Cross  
2 Exhibit No. 9 was  
3 marked for identification  
4 as of this date.)

5 MR. ROBERTSON: Excuse me, your Honor. What was  
6 the number on the exhibit?

7 JUDGE DOLAN: 9.

8 MR. REDDICK: 9.

9 MR. ROBERTSON: 9?

10 Thank you.

11 JUDGE DOLAN: You ready to proceed, Counsel?

12 MS. POLEK-O'BRIEN: Waiting for the court  
13 reporter is just about changed.

14 CROSS-EXAMINATION

15 BY

16 MS. POLEK-O'BRIEN:

17 Q. Good morning, Mr. Gorman.

18 A. Good morning.

19 Q. Stacy Polek-O'Brien for ComEd.

20 You'd agree, wouldn't you, that ComEd  
21 ought to be allowed to recover its cost of  
22 providing service so long as the costs are

1 prudently incurred, reasonable and (inaudible),  
2 right?

3       **A.**     Yes.

4       **Q.**     One of the costs that ComEd incurs is the  
5 cost of mediating manufactured gas plant, right?

6       **A.**     Well, remediating manufactured gas plant is  
7 not a cost of providing transmission and  
8 distribution utility service. It is -- and it's --  
9 I understood ComEd to be responsible for and be  
10 permitted to recover prior to the restructuring of  
11 the industry.

12               Consequently, I have not objected or  
13 questioned their right to recover that through  
14 transmission and distribution rates?

15       **Q.**     In your testimony, you don't attempt to  
16 show that any particular cost associated with that  
17 was imprudently incurred or unreasonable in amount,  
18 right?

19       **A.**     That's correct.

20       **Q.**     The same with respect to environmental  
21 recovery costs, right?

22       **A.**     Right.

1       **Q.**     Thank you.

2                   All right.  Would you agree that when it  
3 comes right down to it, credit really is all about  
4 bankruptcy risk?

5       **A.**     Well, certainly, the risk of default is  
6 embedded in credit rating evaluations.

7                   So that the ability of a corporation to  
8 generate cash flows adequate to support its  
9 financial obligations is what credit rating reviews  
10 are all about.  If they can't support their  
11 financial obligations, the potential for bankruptcy  
12 is certainly a great risk to anybody that loans  
13 money to that corporation.

14                                   (Whereupon, there was a  
15                                   change of reporters.)

16

17

18

19

20

21

22

1 BY MS. POLEK-O'BRIEN:

2 Q. You are familiar with the term debt  
3 instrument; right?

4 A. Yes.

5 Q. Debt instrument is essentially a loan;  
6 correct?

7 A. I would agree with that.

8 Q. There's different types of loans; right?

9 A. There is.

10 Q. There's secured debt; right?

11 A. Yes.

12 Q. Secured debt is debt that's backed up by  
13 some kind of property so that if the person  
14 borrowing the money doesn't pay it back, the person  
15 who you borrowed from would take the property;  
16 right?

17 A. Well, it's backed by whatever the security  
18 is. If it's a mortgage, then it's property and it  
19 would have a right to the first claim on that  
20 property and liquidation. There are other types of  
21 security for loans.

22 Q. Absolutely. Such as?

1       **A.**     Such as a securitization bond.   A  
2   securitization bond is collateralized by the rights  
3   of a revenue stream.   In Illinois and in many other  
4   jurisdictions, a securitization bond is  
5   collateralized completely by irrevocable  
6   obligations from customers to pay instrument  
7   funding charges as long as those securitization  
8   bonds are outstanding.

9               So those bonds are securitized by a  
10   revenue stream, not by the assets.

11       **Q.**     And unsecured debt is debt that doesn't  
12   have any type of security behind it, it's just the  
13   borrower's promise to pay; right?

14       **A.**     They have an obligation to pay, yes.

15       **Q.**     Would you agree that equity capital is  
16   capital that the company has that doesn't come from  
17   debt; right?

18       **A.**     Yes.

19       **Q.**     For most companies, equity capital comes  
20   primarily through the issuance of stock; right?

21       **A.**     If it's a publicly traded company, yes.

22       **Q.**     So the terms "stockholder" and "equity

1 holder" are the same?

2       **A.**     I'm sorry. That's true irrespective of  
3 whether or not it's a private company or public  
4 company, yes, I agree.

5       **Q.**     And stock holder and equity holder, those  
6 terms are -- both mean the same thing; right?

7       **A.**     Well, generally speaking, yes; but there  
8 are different types of equity holders. For  
9 example, there's preferred equity shareholders,  
10 which have a priority right to cash flows of the  
11 corporation before the common equity shareholders  
12 have any right to cash flow or assets.

13       **Q.**     They have a claim that has a preference  
14 over the common equity holders; right?

15       **A.**     Yes.

16       **Q.**     In bankruptcy, debts both secured and  
17 unsecured get paid before equity holders do; right?

18       **A.**     Yes.

19       MR. REDDICK: I'm sorry. What the beginning of  
20 the question?

21       MS. POLEK-O'BRIEN: Debts including --

22       MR. REDDICK: No. What was the second word?



1 MS. POLEK-O'BRIEN: In bankruptcy.

2 THE WITNESS: Well, as a non-lawyer, that's my

3 understanding.

4 BY MS. POLEK-O'BRIEN:

5 Q. I'm asking for your understanding.

6 So the debt holders almost get paid

7 before the equity holders; right?

8 A. Almost always? I think they always do.

9 Q. And suppliers get paid before equity

10 holders do; right?

11 A. That's my understanding, yes.

12 Q. And employees get paid before equity

13 holders?

14 A. I believe so.

15 Q. Lawyers get paid before equity holders?

16 A. I believe so.

17 Q. Even consultants get paid before equity

18 holders; right?

19 A. That's my understanding.

20 Q. And then you have the different kinds of

21 equity holders. And the various types of equity

22 holders that are not common equity holders get paid

1 before the common equity holders do; right?

2       **A.**     Based on the terms of those equity  
3 issuances, yes.

4       **Q.**     So after everyone is paid off, if there is  
5 anything left over, whatever that is, it goes to  
6 the common equity holders; right?

7       **A.**     Yes, that's my understanding.

8       **Q.**     And it's fair to say that, typically,  
9 there's very little of anything left over, in  
10 bankruptcy, the common equity holders --

11       **A.**     Depends on what the market value is of the  
12 underlying company assets. There are companies  
13 that -- I haven't done a detailed valuation of  
14 this, but there are circumstances where the market  
15 value of the assets are significantly above the  
16 book value of the assets and the liquidation value  
17 of the company is greater than the ongoing  
18 operating value of the company.

19               So there are some circumstances where  
20 there may be something left for common equity  
21 shareholders and it may not be insignificant.

22       **Q.**     But, typically, in bankruptcy, there's not

1 very much left for the common equity holders;  
2 right?

3 A. I haven't done a study on it.

4 MR. FOSCO: Your Honor, I'm going to object as  
5 vague and to foundation. I think given this  
6 witness' prior response, there's no foundation for  
7 an answer to that question.

8 MS. POLEK-O'BRIEN: I'll withdraw the question.

9 BY MS. POLEK-O'BRIEN:

10 Q. Equity costs more than debt; right?

11 A. To the extent it is more risky, the market  
12 costs would be higher than lower risk debt costs,  
13 yes.

14 Q. Capital structure, for purposes of this  
15 proceeding, is the debt and equity; right?

16 A. Yes.

17 Q. Say for a minute that there's a company  
18 that has \$100 in debt and \$110 in equity. Would  
19 you agree that its capital structure is about  
20 48 percent debt and 52 percent equity?

21 A. Subject to check, yes.

22 Q. Are you familiar with the term "leverage?"

1       **A.**     Yes.

2       **Q.**     Would you agree that leverage refers to the  
3     amount of debt relative to the equity in the  
4     capital structure?

5       **A.**     Well, I guess my familiarity is it's the  
6     relative amount of debt in proportion to total  
7     capital.

8       **Q.**     Okay. The company that we just talked  
9     about, it's leveraged by 48 percent; right?

10      **A.**     Yes.

11      **Q.**     Would you agree that one of the challenges  
12     a company has is balancing its debt and equity to  
13     that optimal mix?

14      **A.**     Well, I'm sure companies attempt to achieve  
15     an optimal mix, but I think, practically speaking,  
16     getting a reasonable mix is generally what I look  
17     for in rate proceedings.

18      **Q.**     Would you agree that there is no such thing  
19     as a single reasonable structure?

20      **A.**     I do.

21      MS. POLEK-O'BRIEN: Can I just have a minute,  
22     please.

1 JUDGE DOLAN: Sure.

2 (Discussion off the record.)

3

4 BY MS. POLEK-O'BRIEN:

5 Q. Mr. Gorman, in your direct testimony, you  
6 recommend that the Commission use capital structure  
7 that's 50 percent equity and 50 percent debt as  
8 ComEd's capital structure in this proceeding;  
9 right?

10 A. In my direct testimony, yes.

11 Q. That's not ComEd's actual capital  
12 structure; right?

13 A. Well, in my direct testimony, I found that  
14 their decision to make it an all equity funding of  
15 a pension contribution was unreasonable because it  
16 produced an unreasonable amount of common equity.  
17 So I did propose an adjustment in my direct  
18 testimony, that's true.

19 MS. POLEK-O'BRIEN: Okay. I move to strike  
20 that. I asked simply if what he proposed was  
21 ComEd's actual capital structure. That's a yes or  
22 no answer -- question.

1 MR. REDDICK: I think he said that's true.

2 JUDGE HALOULOS: Can you read back the answer --

3 and the question.

4 (Record read as requested.)

5 JUDGE HALOULOS: It will be stricken, but for

6 the "that's true," the end part.

7 MS. POLEK-O'BRIEN: Thank you.

8 BY MS. POLEK-O'BRIEN:

9 Q. So when you decided that the capital

10 structure was not appropriate, in your view, you

11 proposed a hypothetical structure that you thought

12 was reasonable; right?

13 A. That's a fair characterization, yes.

14 Q. All right. Hypothetical capital structure

15 is a construct that we use for ratemaking; right?

16 A. Well, to the extent the actual capital

17 structure is found to be unreasonable, yes.

18 Q. Would you agree that it's also sometimes

19 referred to as a target capital structure?

20 A. Not all the time, no. A hypothetical

21 capital structure may not necessarily be the target

22 capital structure.

1                   To the extent the utility is paying  
2 excessive dividends to its parent or eroding its  
3 common equity and proposes some higher equity-based  
4 capital structure, the adjustment could be made to  
5 defining ratemaking capital structure, which  
6 balances the interest of the investors and  
7 customers, which is not actual, but is yet not a  
8 target capital structure. So that's a case-by-case  
9 evaluation.

10       **Q.**     You're not suggesting that ComEd is doing  
11 any of those things here, are you?

12       **A.**     I didn't mention ComEd in that answer.

13       **Q.**     Would you agree that Commissions -- that  
14 regulatory commissions, under the circumstances  
15 that you mentioned and under different  
16 circumstances, commonly use hypothetical and target  
17 capital structures in place of the utility's actual  
18 capital structure?

19       **A.**     Well, I mean, it depends on the objectives  
20 of the rates and the compromises in the rate  
21 proceeding and a host of other factors, but it's  
22 not uncommon. I would say it's more common to use

1 the actual capital structure.

2 Q. Okay. All right. In your rebuttal  
3 testimony, you changed your mind about this 50-50  
4 hypothetical capital structure and you recommended  
5 a capital structure with only a 37 percent common  
6 equity; right?

7 A. I changed my mind. I was convinced that  
8 ComEd did not fully remove the common equity  
9 supporting the Goodwill asset and, consequently,  
10 adopted Staff's proposed capital structure because  
11 Ms. Kight's proposal didn't accomplish that.

12 So based on a further review of the  
13 facts in this case, I changed my position on the  
14 appropriate cap structure.

15 Q. And you recognized that after you made the  
16 change to 37 percent common equity ratio, ComEd's  
17 capital structure reflects an above average level  
18 of debt leverage; right?

19 A. Yes. And I recognized that and discussed  
20 that issue in my testimony.

21 Q. And you're suggesting that that's what the  
22 Commission use for ratemaking purposes; right?



1       **A.**     Yes.

2       **Q.**     You're not suggesting that ComEd should  
3     have an actual capital structure with 63 percent  
4     debt; right?

5       **A.**     Well, I mean, to the extent it continuously  
6     uses transitional funding instruments, that would  
7     not be an unreasonable target for ComEd. The  
8     transitional funding instruments will be fully paid  
9     off in 2008.

10                   After that, ComEd should have a capital  
11     structure that's appropriate for reflecting only  
12     corporate debt. In a cap structure that has only  
13     corporate debt in it, unlike the cap structure in  
14     the test year, then a 63 percent debt ratio would  
15     be, in my judgment, too high and should not be a  
16     target cap structure.

17       **Q.**     So then you're not suggesting that ComEd go  
18     out and either borrow hundreds of millions of  
19     dollars and buy back its stock or take some other  
20     actions so that its actual debt ratio is 63  
21     percent; right?

22       **A.**     With the qualification on transitional

1 funding instruments. If those aren't available,  
2 then, no, I would not expect that ComEd would  
3 capitalize itself consistent with credit rating  
4 targets for use of only corporate debt.

5 Q. Do you know whether ComEd is able, under  
6 the statute, to do additional securitizations?

7 MR. REDDICK: Objection. Legal conclusion.

8 MS. POLEK-O'BRIEN: I'm just asking him if he  
9 knows.

10 JUDGE DOLAN: Overruled.

11 THE WITNESS: My understanding -- and I haven't  
12 reviewed that statute in a while, but I don't  
13 believe it has the authority for -- the window has  
14 passed when they had authority to come back for  
15 additional securitization bonds, and it chose not  
16 to do it.

17 So my understanding is, going forward,  
18 the option of additional transitional funding  
19 instruments is no longer available to ComEd.

20 BY MS. POLEK-O'BRIEN:

21 Q. Okay. You touched on this just a minute  
22 ago. You're saying, of course, that the capital

1 structure really isn't as low as 37 percent because  
2 of these transitional funding instruments; right?

3 **A.** Can you repeat that, please?

4 **Q.** You're saying that the capital structure  
5 really isn't as low as 37 percent equity because of  
6 the transitional funding instruments; right?

7 **A.** Well, for ratemaking purposes, it is. But  
8 from a credit rating standpoint and the  
9 consideration of ComEd's financial risk, you need  
10 to remove the transitional funding instruments, in  
11 which case the corporate -- the investor capital  
12 for ComEd, as opposed to the investor capital for  
13 securitization bonds, represents a much higher  
14 percentage of equity in total capital,  
15 approximately 45 percent, not 37.

16 **Q.** You just saved me a whole bunch of  
17 questions. Thank you.

18 Let's talk about credit rating agencies  
19 for a minute. Okay? There's essentially three of  
20 them; right?

21 **A.** Yes.

22 **Q.** Standard & Poor's, which is S&P; right?

1       **A.**     Correct.

2       **Q.**     And then there's Moody's and Finch; right?

3       **A.**     Correct. Here in the states, those are the

4     dominant or the most known credit rating agencies.

5       **Q.**     Those three together are the most

6     influential rating agencies in this country; right?

7       **A.**     I would agree with that.

8       **Q.**     When a credit rating agency looks at a

9     company's debt and decides what rating to give it,

10    it looks at risk; right?

11      **A.**     I'm sorry. Can you repeat that? I'm

12    missing something.

13      **Q.**     When a credit rating agency looks at a

14    company's debt and decides what rating to give it,

15    it's looking at risk; right?

16      **A.**     Yes.

17      **Q.**     Higher ratings equal lower risk equal lower

18    costs; right?

19      MR. REDDICK: Say that again.

20      BY MS. POLEK-O'BRIEN:

21      **Q.**     Higher ratings equal lower risk equal lower

22    costs; right?

1       **A.**     When you're focusing only on debt, that's  
2 correct.

3       **Q.**     Thank you. You know, I just want to do a  
4 little bit more on the transitional funding  
5 instruments because you seem to know an awful lot  
6 about them.

7                   TFI is, as you said, would secure debt  
8 instruments; right?

9       **A.**     Yes.

10       **Q.**     And they're backed up by a stream of  
11 revenue; right?

12       **A.**     Yes.

13       **Q.**     It's revenues coming from utility services;  
14 right?

15       **A.**     From transitional funding instrument  
16 charges, not from utility services.

17       **Q.**     The stream of revenues that makes up the  
18 security is a stream of revenues from utility  
19 services?

20       MR. REDDICK: Asked and answered.

21       JUDGE DOLAN: What did you say?

22       MR. REDDICK: The question was asked and

1 answered. The immediately preceding question was  
2 exactly the same.

3 JUDGE DOLAN: Can you read it? I missed the  
4 question. I'm sorry.

5 MS. POLEK-O'BRIEN: Let me just do it this way  
6 then.

7 BY MS. POLEK-O'BRIEN:

8 Q. Do you agree that the only people who pay  
9 moneys that are used to pay off the bonds are  
10 people that receive utility services?

11 A. Yes. The customers of the utility system  
12 are required to pay the instrument funding charges.  
13 Then they produce the revenue that is  
14 collateralizing those bonds.

15 Q. In the case of ComEd, there are customers  
16 taking delivery service from ComEd; right?

17 A. They will pay instrument funding charges  
18 until those bonds are fully paid off.

19 Q. And customers who are taking bundled  
20 service from ComEd; right?

21 A. Yeah, through the end of this year, that's  
22 correct.

1       **Q.**     Do you understand that in connection with  
2     the transitional funding instruments, before they  
3     were possible, the General Assembly created a  
4     current interest in a future stream of revenues?

5       **A.**     Yes, produced through the instrument  
6     funding charge.

7       **Q.**     And if you have a current interest in  
8     something, is it your understanding that you're  
9     able to divest it, give it to somebody else, sell  
10    it to somebody else, trade it?

11      **A.**     I'm not sure if I'm following that  
12    representation.

13      **Q.**     If something belongs to you, you can give  
14    it to somebody else; right?

15      **A.**     If it belongs to you, yes.

16      **Q.**     Okay.

17      **A.**     And there's no restrictions on giving it to  
18    somebody else, yeah.

19      **Q.**     Okay. And in the case of the transitional  
20    funding instruments, it was up to the utilities  
21    what to do with that interest in the future stream  
22    of revenues; right?

1       **A.**     No.    The ownership of the revenues from the  
2   instrument funding charges is not the utility's.  
3   It is a special purpose entity, an affiliate of  
4   ComEd.

5               ComEd has no discretion over what to do  
6   with the revenues produced through instrument  
7   funding charges.  They will be used or passed on to  
8   the affiliate which will make debt service payments  
9   under transitional funding.

10       **Q.**     Absolutely.  So the process that leads us  
11   to this point is as follows:  The General Assembly  
12   creates a current interest in a future stream of  
13   revenues; right?

14       **A.**     I'm not familiar with the word "current  
15   interest."  But the General Assembly will  
16   essentially allow the creation of transitional  
17   funding property, which is an amount of revenue to  
18   be produced over a certain period of time, which  
19   collateralizes bonds that will be sold and  
20   collateralized by the revenue.

21       **Q.**     Yes.  Thank you.  So the stream of revenues  
22   that come into the utility are not available to the



1 utility for the utility's use; right?

2 A. That's correct.

3 Q. They belong to somebody else; right?

4 A. Well, I'm sorry. Did you say the revenue  
5 stream produced the instrument funding charges?  
6 Those are not available to the utility.

7 However, the proceeds of the bond issue  
8 were made available to the utility with the  
9 specific intent to reduce the utility's cost of  
10 capital.

11 Q. That's right.

12 A. So the utility did benefit through the  
13 issuance of securitization bonds?

14 Q. Absolutely. So in the case of ComEd, in  
15 exchange for ComEd allowing this property interest  
16 to go to the special purpose entity, the special  
17 purpose entity used the money it had borrowed with  
18 that based on property and gave the money to ComEd;  
19 right?

20 A. Gave the bond proceeds to ComEd and the  
21 revenue went to the special purpose entity.

22 Q. And ComEd used those proceeds from the

1 special purpose entity to pay down debt; right?

2 A. And equity.

3 Q. And to pay the costs of the financing that

4 we've been talking about; right?

5 A. Yes.

6 Q. Now, the benefit of doing all this is that

7 the bonds that were issued were the highest quality

8 bonds; right?

9 A. Yes.

10 Q. AAA; correct?

11 A. AAA corporate credit rating, yes.

12 Q. And would you agree that the interest rate

13 on the bonds was the lowest available at the time

14 in the market?

15 A. For a corporation, yes. I can't attest to

16 it being the absolutely lowest. There might be

17 another AAA bond issue that was lower. It was in

18 the highest credit rating available in the market

19 for corporate credit rating.

20 Q. It was substantially lower than any of the

21 rates otherwise available to ComEd; right?

22 A. I believe that's true, yes.

1       **Q.**     Okay.  There's been some negative  
2     perception about the electric industry over the  
3     last couple of years; right?

4       **MR. REDDICK:**  By whom?

5     **BY MS. POLEK-O'BRIEN:**

6       **Q.**     The public.

7       **A.**     In answering that, I think it's important  
8     to distinguish the merchant portion of the electric  
9     utility industry and the regulated aspects of the  
10    electric utility industry.

11               Overall, the market, especially in the  
12    years 2001 through about 2003, were very leery of  
13    merchant energy aspects of the industry because of  
14    certain management practices which are inconsistent  
15    with the best interests of the shareholders,  
16    accounting irregularities, false trading  
17    activities.  And that caused a significant  
18    liquidity problem in the nonregulated aspects of  
19    the utility industry during that time period.

20               As a result, many companies have  
21    developed a back to basics objective; that is, to  
22    shed a lot of these higher-risk nonregulated

1 merchant activities; power trading, gas trading,  
2 and in some cases, even merchant station  
3 development.

4                   And it reverted back to a back to  
5 basics, back to regulated utility operations. And  
6 that has been perceived very positively by the  
7 investment community because that's referred to as  
8 a poor competency for the energy industry.

9                   Utility management are very capable of  
10 running regulated utility operations. It's much  
11 lower risk, much more stable cash flows than are  
12 the much greater risk nonregulated power trade, gas  
13 trading, merchant plant development, without a  
14 secure defined customer base for it.

15                   So that, essentially, describes the  
16 industry over the last five or six years.

17       **Q.**     S&P, in particular, credits the improved  
18 credit quality liquidity enhancement to improving  
19 credit rating measures resulting primarily from  
20 reduction of high-cost debts and elimination of  
21 higher risk nonutility investments, as well as the  
22 industry shift to a back to basics business model

1 concentrating on core competencies, debt reduction,  
2 and risk management; right?

3       **A.**     That sounds familiar. I can't say you  
4 quoted whatever you're reading correctly, but that  
5 sounds pretty consistent with what I just said.

6       **Q.**     That's Lines 90 to 94 of your direct  
7 testimony.

8       **A.**     Okay. That is a statement from S&P.

9       **Q.**     Let's look at how ComEd did under that  
10 criteria. Okay? ComEd certainly qualifies as  
11 focusing on its core competency; right? It  
12 delivers power and energy and that's about it;  
13 right?

14       **A.**     That's what ComEd does, yes.

15       **Q.**     And ComEd is doing that better now than it  
16 has in the past; right?

17       **A.**     I'm not sure I agree with that.

18       **Q.**     Has ComEd, in fact, lowered its debt?

19       **A.**     Relative to when?

20       **Q.**     Relative to what it was a few years ago.

21       **A.**     Yes.

22       **Q.**     Significantly; right?

1       **A.**    I believe it has reduced debt in a  
2 meaningful way, yes.

3       **Q.**    Are you familiar with what Mr. Mitchell  
4 referred to as the accelerated liability management  
5 program?

6       **A.**    Am I familiar with what he meant by it,  
7 yes.

8       **Q.**    With the program.

9       **A.**    Yes.  It's a debt reduction objective or  
10 plan.

11      **Q.**    And under the program, ComEd reduced debt  
12 by 1.231 billion; right?

13      **A.**    I believe that's his testimony, yes.

14      **Q.**    Do you have any reason to disagree with  
15 that?

16      **A.**    No.

17      **Q.**    Despite his focus on core competency and  
18 the substantial reduction in debt, while other  
19 utilities are getting approved ratings, ComEd is  
20 downgraded; right?

21      **A.**    ComEd was recently downgraded due to two  
22 events identified by credit rating agencies.

1                   One deals with the proposed merger  
2   between Exelon and Public Service Electric and Gas  
3   and a concern by credit rating agencies of the  
4   pursuit of growth through acquisitions and  
5   potentially higher risk activities.

6                   The second deals with the legislative  
7   and regulatory uncertainty in Illinois surrounding  
8   power costs procured recovery.

9       MS. POLEK-O'BRIEN:   Move to strike everything  
10   and I'll just ask it again, if that's acceptable,  
11   and get a yes or no answer.

12   BY MS. POLEK-O'BRIEN:

13       Q.     The question was, despite the substantial  
14   reduction, while other companies are improving  
15   their ratings, ComEd was downgraded; right?

16                   I don't know how that's not a yes or no.

17       MR. REDDICK:   He did answer the question and  
18   ComEd witnesses have been given the courtesy of  
19   explaining their answers.   So I don't see any  
20   reason why this witness shouldn't have the same  
21   courtesy.   It will simply prolong redirect.

22       JUDGE DOLAN:   I'm going to overrule the motion

1 to strike.

2 (Whereupon, ComEd

3 Cross Exhibit Nos. 16 and 17 were

4 marked for identification

5 as of this date.)

6 MS. POLEK-O'BRIEN: I have handed to the witness  
7 two documents, one from Moody's Investors Services  
8 that I ask be marked as ComEd Cross Exhibit 16, and  
9 another from Standard & Poor's which I will ask to  
10 be marked as ComEd Cross Exhibit 17.

11 BY MS. POLEK-O'BRIEN:

12 Q. Mr. Gorman, are you familiar with those  
13 documents?

14 A. I'm sorry. What did you ask me?

15 Q. If you're familiar with the documents.

16 A. I've looked at an awful lot of credit  
17 reports and I know I've read these captions, so I  
18 believe I'm familiar with them, but I can't say for  
19 certain.

20 Q. If you'd take a moment to look at them and  
21 see if they're the ones that you're talking about.

22 A. Yes, I believe I have seen these before.



1       **Q.**     And do these, in fact, appear to be the S&P  
2     and Moody's reports related to the downgrade of  
3     ComEd?

4       **A.**     Yes.

5       **Q.**     When a company is downgraded, it means that  
6     its credit score is made lower by the agency;  
7     right?

8       **A.**     Yes, it is reduced.

9       **Q.**     And it means that the agency believes that  
10    the company is riskier than it was before; right?

11      **A.**     That the credit rating is not as strong as  
12    before, yes.

13      **Q.**     The Commission entered an order that  
14    essentially approved a flow-through of costs and  
15    procurement so long as the costs were incurred  
16    using a specific auction process; right?

17      **A.**     I don't know of all the details, but I  
18    believe that's correct.

19      **Q.**     That order was entered on January 24th,  
20    2005? Does that time frame sound right?

21      MR. BERNET:   2006.

22      BY MS. POLEK-O'BRIEN:

1       **Q.**     2006.   The time frame was wrong.

2       **A.**     It's been recent since I filed my direct  
3 testimony.   So the '06 -- January of '06 date  
4 sounds correct.

5       **Q.**     Okay.   After that order was issued, ComEd's  
6 ratings weren't increased; right?

7       **A.**     No.

8       **Q.**     Okay.   In fact, the day after the  
9 Commission entered its order, S&P and Finch  
10 reaffirmed its credit ratings; right?

11       **A.**     For reasons stated in those reports, yes.  
12 (Whereupon, ComEd  
13 Cross Exhibit Nos. 18 and 19 were  
14 marked for identification  
15 as of this date.)

16

17 BY MS. POLEK-O'BRIEN:

18       **Q.**     I've just handed the witness two more  
19 documents that I ask be marked as ComEd -- well,  
20 let me start over.

21               The one from S&P that's dated January  
22 25, 2006, I ask to be marked as ComEd Cross

1 Exhibit 17. Let me ask that one be marked as ComEd  
2 Cross Exhibit 19, while the one from Fitch dated  
3 January 25, 2006, be marked as ComEd Cross  
4 Exhibit 18.

5 MR. REDDICK: Would you review that again.

6 MS. POLEK-O'BRIEN: Okay. The one from S&P is  
7 going to be ComEd Cross Exhibit 18. This is 18.  
8 And the other one from Fitch is 19.

9 BY MS. POLEK-O'BRIEN:

10 Q. Have you had a chance to take a look at  
11 those documents?

12 A. Yes.

13 Q. And are those the documents that, in fact,  
14 do affirm these agencies' ratings of ComEd?

15 A. Yes.

16 Q. Just last week, S&P issued a report noting  
17 that ComEd's procurement risks were real,  
18 especially given the political attacks on the  
19 procurement decision?

20 MR. REDDICK: Your Honor, I'm not sure where  
21 this is all going. So I will object because none  
22 of this seems relevant. She's not impeaching the

1 witness. The documents don't seem to say anything.

2 At this point, we're simply reading into  
3 the record things that ComEd could have put into  
4 the record in its rebuttal testimony. All of these  
5 documents predate surrebuttal testimony.

6 MS. POLEK-O'BRIEN: I actually believe that -- I  
7 think all -- at least almost all of these documents  
8 are going to be offered as part of Mr. Mitchell's  
9 testimony. They were attached to that when it was  
10 filed quite some time ago.

11 I think this is very relevant to the  
12 witness' testimony. He has testified about the  
13 changes in the industry. And I think it is  
14 perfectly appropriate and indeed necessary to --

15 JUDGE DOLAN: I'll sustain the -- I mean, I'll  
16 overrule the objection. So proceed.

17 BY MS. POLEK-O'BRIEN:

18 Q. Do you remember the question?

19 A. No.

20 Q. All right. Just last week, S&P issued a  
21 report noting that ComEd's procurement risks were  
22 real, especially given the political attacks on the

1 procurement decision; right?

2       **A.**     Well, last week S&P issued a report  
3 describing a concern about procurement risks. I  
4 can't validate your characterization of their  
5 statements.

6 (Whereupon, ComEd  
7 Cross Exhibit No. 20 was  
8 marked for identification  
9 as of this date.)

10 BY MS. POLEK-O'BRIEN:

11       **Q.**     I've handed the witness a document by  
12 Standard & Poor's entitled Fuel and Purchased Power  
13 Cost Recovery in the Wake of Volatile Gas and Power  
14 Markets, U.S. Electric Utilities To Watch, dated  
15 March 22nd, 2006. And I ask that it be marked as  
16 ComEd Cross Exhibit 20.

17               Mr. Gorman, have you had a chance to  
18 take a look at this document?

19       **A.**     Well, not all of it, but some parts of it,  
20 yes.

21       **Q.**     And is this the document that you just  
22 talked about?

1       **A.**     I haven't seen this document before.

2       **Q.**     Do you have any doubt that this is, in  
3 fact, a document issued by S&P?

4       MR. REDDICK:  Objection.  Irrelevant.

5       JUDGE DOLAN:  I'll sustain that.

6 BY MS. POLEK-O'BRIEN:

7       **Q.**     Would you take a look, please, at Page 3 of  
8 22.  That first big paragraph on the page about six  
9 lines down, you see where it says, Likewise?

10      **A.**     Yeah, I see it.

11      **Q.**     It says, Likewise, in states that are  
12 considering rate-cap extensions, the potential for  
13 commodity risk at the electric distributor level is  
14 also high.  In these states, distributors may have  
15 to recontract their supplier arrangements at market  
16 rates, paren, once their current contracts expire,  
17 end paren, while collecting capped, paren, and  
18 potentially below market, end paren, generation  
19 rates from customers.

20               For this reason, when the Illinois  
21 governor and other legislators took several  
22 unfavorable actions to prevent Illinois utilities

1 from raising electric rates in 2007, Standard &  
2 Poor's placed Central Illinois Public Service  
3 Company, BBB plus, and Illinois Power Company, BBB  
4 plus, on credit watch with negative implications  
5 and lowered its issue of credit rating on  
6 Commonwealth Edison Company to BBB plus from A  
7 minus.

8 Did I read that correctly?

9 MR. REDDICK: I'm going to object. The witness  
10 said I have not seen the document before, hasn't  
11 had a chance to review it. So they read that into  
12 the record simply asking, Is that what it says?  
13 This is just reading someone else's document into  
14 the record under the guise of cross examination.

15 MR. FOSCO: Staff will join in that. I think  
16 we've established there is no foundation for this  
17 document. And we do have a schedule in this  
18 proceeding which provided time lines. And this  
19 document does not appear to be directly  
20 contradicting something else to clarify. So I  
21 think it's inappropriate.

22 Staff hasn't had an opportunity

1 certainly to respond to this document. And we  
2 think reading it in like this is unfair and  
3 objectionable and should not be allowed.

4 JUDGE DOLAN: Do you want to respond to that?

5 MS. POLEK-O'BRIEN: We have testimony from this  
6 witness that S&P, one of the major three credit  
7 rating agencies in this country, is influential.  
8 And we have had testimony from him about what S&P  
9 thinks and says on a number of subjects.

10 I think that this is absolutely relevant  
11 to his testimony, to the issues before the  
12 Commission. Mr. Gorman brought up the issue of  
13 what S&P thinks. That being the case, I think it's  
14 perfectly reasonable that we get a full record on  
15 what it is that S&P said.

16 JUDGE DOLAN: I'm going to overrule the  
17 objections.

18 THE WITNESS: Can you repeat the question?

19 BY MS. POLEK-O'BRIEN:

20 Q. The question was, did I correctly read the  
21 passage?

22 A. Yes.



1       **Q.**     Mr. Gorman, is it reasonable to think that  
2     at least one of the things credit agencies want to  
3     see is the outcome of this case?

4       MR. REDDICK:   Objection.   Calls for speculation.

5       JUDGE DOLAN:   Sustained.

6     BY MS. POLEK-O'BRIEN:

7       **Q.**     Mr. Gorman, does the market, in your expert  
8     opinion, pay attention to what this Commission  
9     does?

10      **A.**     Yes.

11      **Q.**     Do the credit agencies, in your expert  
12     opinion, pay attention to what this Commission  
13     does?

14      **A.**     Yes.

15      **Q.**     In your expert opinion, is it likely that  
16     the market and the credit rating agencies are  
17     waiting to see what the Commission does in this  
18     proceeding?

19      **A.**     Yes.

20      **Q.**     So how the Commission rules here in this  
21     case may well impact the rating on ComEd's debt;  
22     right?

1       **A.**     Well, there's always that possibility. I  
2 haven't seen any statements from Standard & Poor's  
3 or any of the other credit rating agencies that  
4 they're keying on the development of delivery  
5 service rates in credit rating for ComEd. Rather,  
6 it is keying more towards ComEd's ability to fully  
7 recover procurement costs.

8                   Having said that, certainly, the  
9 regulatory decisions here are relevant and  
10 important.

11       **Q.**     How much debt does ComEd have outstanding?

12       **A.**     I believe their cap structure shows a  
13 little more than \$4 billion.

14       **Q.**     If what the Commission does in this case  
15 impacts the market's view of ComEd, it's also  
16 likely that what the Commission does in this  
17 proceeding will impact the cost of ComEd's equity  
18 as far as the market is concerned; right?

19       MR. REDDICK:   What was your assumption?

20       MS. POLEK-O'BRIEN:   Would you read it back.

21       THE WITNESS:   I need you to repeat that, too.

22       MS. POLEK-O'BRIEN:   Let me just try it again.

1 BY MS. POLEK-O'BRIEN:

2 Q. We've agreed that the market is going to  
3 pay attention to what the Commission does in this  
4 proceeding most likely; right?

5 A. Yes.

6 Q. And the end result could impact ComEd's  
7 debt costs; right?

8 A. It could, but I don't know if that's a  
9 major concern for the credit agencies right now.  
10 It's more lined up with procurement costs recovery.

11 Q. And what the Commission does in this docket  
12 could also impact the cost of ComEd's equity;  
13 right?

14 A. Regulatory decisions can improve or erode  
15 credit standing, yes.

16 Q. You've been involved with ComEd cases for  
17 quite a long time, haven't you?

18 A. Yes.

19 Q. You testified back in the nuc rate basing  
20 cases; right?

21 A. Yes.

22 Q. Is it your opinion that the markets

1 typically react to what the Commission does in  
2 ComEd rate cases?

3       **A.**     They wouldn't necessarily react to it, but  
4 they certainly review it in terms of the  
5 implications on ComEd's rate mechanism's ability to  
6 provide predictable cash flows and support  
7 financial obligations.

8       **Q.**     And they react either by making an  
9 adjustment if it's necessary or by doing nothing if  
10 it's not necessary; right?

11       **A.**     We find that the regulatory Commission  
12 decisions were as expected and they support current  
13 credit rating.

14       **Q.**     Okay. Let's switch subjects. Let's talk  
15 about -- let's talk about forecasted data. Okay?

16               I'd like to see if we could do a little  
17 analogy. Assume if you would, Mr. Gorman, that  
18 you're looking to buy an apartment building, small  
19 apartment building to rent out. Okay? When you're  
20 looking for one, are you going to consider the  
21 neighborhood that the various buildings are in?

22       **A.**     Depends on whether or not there's favorable

1 financing for certain neighborhoods. Otherwise, I  
2 wouldn't consider it. Financially investment  
3 objective undertaken.

4 Q. And investment objective is likely to be to  
5 make money; right?

6 A. Profit making investment objective, yes.

7 Q. So when you're considering various options,  
8 you're going to consider the information that you  
9 have about the neighborhoods; right?

10 A. Yes.

11 Q. And you're going to consider information  
12 you have about on what you think those  
13 neighborhoods will be like in the future; right?

14 MR. REDDICK: Objection. At this point, it's  
15 irrelevant. I hope we're going to get back to  
16 utilities sometime soon.

17 MS. POLEK-O'BRIEN: Just the fewest questions.  
18 We are absolutely going to get back to utilities.

19 JUDGE DOLAN: Proceed, please.

20 THE WITNESS: Yeah, you would have to draw some  
21 expectations about the rentability of that property  
22 going forward and the level of rent you charge for

1 it.

2 BY MS. POLEK-O'BRIEN:

3 Q. And based on what those expectations are,  
4 you're going to set the price you're willing to  
5 pay; right?

6 A. You would establish what you believe to be  
7 a fair acquisition price.

8 Q. If five years down the road, after you've  
9 purchased the building, your expectations didn't  
10 turn out to be correct, that doesn't change the  
11 price you initially paid for it five years ago;  
12 right?

13 A. That's correct.

14 Q. When we talk about a return on equity, we  
15 talk about the cost of equity?

16 A. Yes.

17 Q. It's what a company has to pay for the  
18 equity that it has?

19 A. Well, the rate of return it needs to earn  
20 to attract additional equity.

21 Q. You agree that the financial market  
22 determines what the actual cost of equity is;

1 right?

2       **A.**     The market sets the price of the stock and  
3 the expected returns on the stock imply an  
4 investment return expected by the market place. It  
5 is established by the market, yes.

6       **Q.**     And when the market does that, it  
7 establishes based on what it knows and what it  
8 expects to happen in the future; right?

9       **A.**     Yes.

10       **Q.**     So when we need to figure out today what  
11 the cost is, we have to figure out what the market  
12 knows today and what it expects to happen; right?

13       **A.**     Yes, to the best of our ability.

14       **Q.**     And if we're wrong -- strike that.

15                If it turns out that the market was  
16 wrong in its expectations, that doesn't change what  
17 the price is back when you set it, right, based on  
18 those expectations?

19       **A.**     It wouldn't change the price of the  
20 property. It wouldn't change the price of stock.  
21 It would be what the general market value of that  
22 property or security is at that point in time.

1       **Q.**     Okay.  Thank you.  I'm running a bit long,  
2     so we'll strike that out.

3                     You're appearing today, Mr. Gorman, on  
4     behalf of IIEC; right?

5       **A.**     Yes.

6       **Q.**     What companies make up IIEC in this  
7     proceeding?

8       **A.**     I have to review that.  I didn't bring that  
9     information with me.

10      **Q.**     Ford Motor Company --

11      MR. REDDICK:  Objection.  He said he didn't  
12     know.

13      JUDGE DOLAN:  Sustained.

14     BY MS. POLEK-O'BRIEN:

15      **Q.**     Mr. Gorman, I'm going to read you a list of  
16     companies and tell me if that refreshes your  
17     recollection so you no longer have to go back and  
18     look and see who you're representing here.  Okay?  
19     Ford --

20      MR. REDDICK:  Objection.

21      MS. POLEK-O'BRIEN:  I'm sorry.  He doesn't  
22     recall.  He has refused anything I have available



1 to refresh his recollection.

2 JUDGE DOLAN: Counsel, if you wanted to take a  
3 break and give him his information, I mean, we are  
4 going to get to who he represents one way or the  
5 other.

6 MR. REDDICK: Let's take a break then.

7 JUDGE DOLAN: Make it a quick one.

8 (Recess taken.)

9 BY MS. POLEK-O'BRIEN:

10 Q. Mr. Gorman, have you figured out who you  
11 represent?

12 A. I have.

13 Q. And who is that?

14 A. Seeing the intervention petition which  
15 includes Ford, Foreign Products, Domler Chrysler --

16 MR. REDDICK: Could we just stipulate who these  
17 people are? Ford, Foreign Products, Domler  
18 Chrysler, Merchandise Mart, Sterling Steel, Thermal  
19 Chicago, University of Illinois, Abbot,  
20 Caterpillar, Cit-Go.

21 BY MS. POLEK-O'BRIEN:

22 Q. Mr. Gorman, with respect to those companies

1 that you represent that are publicly traded, they  
2 all have pension plans; right?

3 A. I haven't reviewed that.

4 Q. You don't know?

5 A. I don't know.

6 Q. Do you know if large corporations  
7 recently -- meaning in the last couple of years --  
8 have been increasing their pension contributions?

9 A. No. A lot of corporations have actually  
10 suspended the fine benefit plans. Those that have  
11 not have needed to make -- well, not all of them.  
12 Some have needed to make cash contributions to the  
13 pension plan in order to bring the pension trust  
14 fund assets in line with the current obligations of  
15 their plant.

16 Q. Mr. Gorman, you take issue with  
17 Dr. Hadaway's use of GDP data in the growth rate,  
18 right, in the DCF analysis?

19 A. Well, no, not his use of GDP data. His use  
20 of stale data which doesn't reflect current market  
21 participants' expectations of future growth.

22 Q. You say that, quote, Clear evidence

1 demonstrates that Dr. Hadaway did not give more  
2 weight to recent GDP forecasts; correct?

3       **A.**     Yes.

4       **Q.**     Did you review how Dr. Hadaway arrived at  
5 the growth rate that he used?

6       **A.**     Yes. He included a schedule that developed  
7 a 6.6 percent GDP growth rate.

8       **Q.**     Would you agree essentially it's an average  
9 of averages?

10       **A.**     It is.

11       MR. REDDICK: Your Honor, while Ms. O'Brien is  
12 gathering a paper, I've been informed by Co-Counsel  
13 that I missed one company. Minnow Steel, ISG.

14       JUDGE DOLAN: Thank you.

15                               (Whereupon, ComEd  
16                               Cross Exhibit No. 21 was  
17                               marked for identification  
18                               as of this date.)

19 BY MS. POLEK-O'BRIEN:

20       **Q.**     Mr. Golden, I've handed you a document and  
21 I'm going to ask that it be marked as ComEd Cross  
22 Exhibit 21.

1                   What I'd like to do is to go through the  
2 method you just talked about, the method by which  
3 Dr. Hadaway got to his average. We could do it one  
4 of two ways. We can do it on the board step by  
5 step, which is what I was going to do.

6                   But given the time, if you can examine  
7 this document and tell me if this is a reasonable  
8 representation, not of the numbers, but of the  
9 method that Dr. Hadaway used to reach his 6.6  
10 percent GDP rate.

11       MR. REDDICK: Before we attempt to do that, can  
12 you give us the code; the blue numbers, the green  
13 numbers, brown numbers, red numbers?

14       MS. POLEK-O'BRIEN: Every year has a different  
15 color. That's all.

16       THE WITNESS: I'm afraid you're going to have to  
17 walk through it. I have not attempted to replicate  
18 Dr. Hadaway's GDP historical average.

19                   My observation of his analysis really  
20 dealt with the determination of GDP over the  
21 averages and real GDP in those averages and apply  
22 real GDP the 6.6 factor, and then they suggest an

1 inflation rate built into that.

2                   And over time, real GDP has been around  
3 3 to 3 and a half percent. Projected inflation  
4 right now is about 2 and a half percent. Real GDP  
5 projections again are about 3 percent.

6                   So, going forward -- and, historically,  
7 real GDPs have been relatively stable, relatively.  
8 What's changed going forward relative to  
9 Dr. Hadaway's historical analysis is the inflation  
10 built into the number. Nominal GDP is a function  
11 of real GDP and inflation.

12                   His real GDP going forward is consistent  
13 with historical numbers as it is consistent with  
14 consensus economist projections. The difference  
15 between Dr. Hadaway's number and the consensus  
16 economist projections is the relative inflation  
17 rate built into the nominal GDP projection.

18                   Dr. Hadaway has overstated expected  
19 future inflation rates.

20       **Q.**     And then, Mr. Gorman, the answer to my  
21 question was yes or no?

22       **A.**     The answer to your question is I didn't

1 replicate his analysis. I simply looked at his  
2 data to judge the reasonableness of his end result.  
3 And his end result is inflated because it implies  
4 an inflation expectation which is way out of line  
5 with projected -- consensus of economist  
6 projections in the future.

7 Q. Mr. Gorman, that answer, like the last one,  
8 is very unresponsive. But under the assumption  
9 that it's going to save us redirect, I'm not going  
10 to have it stricken.

11 Mr. Gorman, you testified just a couple  
12 of minutes ago that you looked at the way that  
13 Dr. Hadaway got to his 6.6 percent growth rate;  
14 right?

15 A. I looked at his schedule.

16 Q. Okay. And you agreed that what he did was  
17 take an average of averages; right?

18 A. Yes.

19 Q. He took the average of the 10-year and the  
20 20-year and the 30-year, the 40-year, and the  
21 50-year and the 57-year averages and he averaged  
22 those averages together; right?

1       **A.**     Yes.

2       **Q.**     And you testified that clear evidence  
3 demonstrates that Dr. Hadaway did not give more  
4 weight to more recent GDP forecasts; right?

5       **A.**     Yes.

6       **Q.**     Okay. Being familiar -- Mr. Gorman, would  
7 you agree that in Dr. Hadaway's analysis, the  
8 method he used to arrive at the 6.6 percent GDP,  
9 that each one of those averages includes the GDP  
10 rates for the most recent years?

11               So, for example, the years 2002 and 2003  
12 and 2004 are captured by the 10-year average, and  
13 the 20-year average, and the 30-year average, the  
14 40, the 50, and the 57-year averages; right?

15       **A.**     I agree.

16       **Q.**     All right. The older data is not captured  
17 in all of the averages; correct?

18       **A.**     Correct.

19       **Q.**     So, for example, the data from 1951 only  
20 appears in one of those averages; right?

21       **A.**     Yes.

22       **Q.**     Okay. Does this chart then accurately

1 depict the method that Dr. Hadaway used?

2       **A.**    I don't understand this chart.

3       **Q.**    Okay. Let us talk again about MGP costs.

4       **A.**    I'm sorry. What?

5       **Q.**    MGP costs, manufactured gas plant costs.

6                   Do you agree that the amount of MGP

7 remediation expense that was included in rates in

8 ComEd's last bundled rate case was \$420,000?

9       **A.**    I don't agree with that -- well, I don't

10 know for certain. I looked in the last order and I

11 thought there was \$9 dollars of cost included in

12 the delivery service rate case.

13       **Q.**    I'm sorry. I said the last bundled rate

14 case, last general rate case.

15       **A.**    I haven't looked at the last bundled

16 general rate case.

17 (Discussion off the record.)

18 BY MS. POLEK-O'BRIEN:

19       **Q.**    Are you aware that MGP costs exceeded

20 \$20 million in 2002?

21       **A.**    Mr. Hill had that in his testimony. And I

22 have to confess, I did not memorize those numbers.



1 Q. Sound like the right ballpark?

2 A. 2002, exceeded \$20 million, yes.

3 (CHANGE OF REPORTER)

4 Q. And in 2003, it exceeded 40 million?

5 A. That's correct?

6 Q. And 10 million in 2004?

7 A. Yes.

8 Q. And it's your position that the rider's not  
9 an appropriate regulatory matter regarding these  
10 costs, right?

11 A. Yes.

12 Q. And they pay with respect to other  
13 environmental litigation --

14 A. My position is the environmental cost  
15 recovery rider should be rejected. If the company  
16 were proposing a straight manufacturing gas plant  
17 cost, I would have reviewed that separate.

18 So the company has not asked for  
19 recovery of these costs in the rider separately  
20 from the other costs. So I haven't reviewed that  
21 possibility. But the company's environmental cost  
22 recovery rider I believe is inappropriate.

1       **Q.**     As you sit here, you have no opinion on  
2     whether in and of itself the manufacturing gas  
3     plant, the mediation recovery rider would be  
4     appropriate; is that right?

5       **A.**     Well, I mean, I have an opinion. I think  
6     the Commission's already authorized utilities for  
7     that particular expense. If the Commission's  
8     find- -- the Commission finds, the Commission  
9     finds. I'm not suggesting the Commission should  
10    reverse any findings already made.

11      **Q.**     So if the other utilities are allowed to  
12    recovery those costs through a rider, ComEd should,  
13    too?

14      **A.**     If that's the Commission's finding, yes. I  
15    don't think that they're so volatile that they  
16    compare a ComEd billing on unauthorized returns, as  
17    such to justify a rider. But if the Commission  
18    permits riders for those costs, then so be it.

19      MS. POLEK-O'BRIEN: Those are all the questions  
20    I have.

21      JUDGE DOLAN: Thank you. You know, I just have  
22    a couple questions.

1 EXAMINATION

2 BY

3 JUDGE DOLAN:

4 Q. Getting back to capital structure, do you  
5 have an opinion as to when a company has too little  
6 equity in it?

7 A. Yeah. I think it is generally an analysis  
8 that can be made and clearly shows the credit  
9 rating strength of the underlying capital  
10 structure. And in order to properly review that  
11 credit rating strength, you need to take into  
12 consideration certain circumstances which impact  
13 the relative weights of the debt equity in the rate  
14 capital structure and how they would be reviewed by  
15 the credit analysts.

16 And the capital structure is advocated  
17 by Staff and supported by myself. The common  
18 equity ratio is 37 percent. If that were all  
19 corporate capital, which it's not, that would be a  
20 relatively low percentage of common equity, and  
21 there would be reason for concern on capital  
22 structures with those relative weights.

1                   But the distinguishing factor here is  
2 out of roughly \$4 billion of utility debt, a little  
3 over \$1 billion of it is transitional funding  
4 instruments, which is a very special debt  
5 instrument which does not impact the corporate  
6 credit rating risk because that transitional  
7 funding debt is collateralized only by the revenues  
8 produced through instrument funding charges.

9                   So it's an animal unto itself. It does  
10 not impact the corporate credit rating risks; and,  
11 therefore, you need to give that consideration in  
12 reviewing the relative common equity ratio for the  
13 rate cap structure.

14                  When you pull out the transitional  
15 funding instruments and just look at the cooperate,  
16 the invest- -- the utility investor capital, the  
17 common equity ratio is about 45 percent equity and  
18 55 percent utility corporate debt. That's a  
19 capital structure that is reasonable, in my  
20 judgment, for rate-making purposes.

21                  But the benefit of the transitional  
22 funding instruments is entitled -- customers are

1 entitled to that benefit so it needs to be included  
2 in the rate capital structure. And can be done so  
3 without impairing the financial and credit standing  
4 of the underlying utility.

5           So this -- when you do the analysis  
6 correctly, you need to look at the equity ratio  
7 that truly reflects the financial risks of the  
8 enterprise. And the enterprise -- the equity ratio  
9 reflecting ComEd's risk is about 45 percent or 37.

10           And what common equity ratio then would  
11 be reasonable when you're just looking at the  
12 corporate obligation, utility investor obligations,  
13 is really based on review of what credit analysts  
14 tell us, the appropriate capital structures are for  
15 the operating and financial risk or the utility  
16 instrument and the company specifically.

17           In this case, ComEd's business profile  
18 scored four with a triple D investment break  
19 offering. So that's in 45 percent common equity  
20 ratio and 55 percent utility corporate debt ratio  
21 is adequate to support the investment great bond  
22 rating, and is adequate to support ComEd's current

1 credit rating.

2 JUDGE DOLAN: Thank you. Any redirect?

3 MR. REDDICK: Ms. O'Brien hasn't offered any of  
4 her cross exhibits. My redirect will be affected  
5 by whether they are admitted or not.

6 JUDGE DOLAN: Okay.

7 MS. POLEK-O'BRIEN: I ask for admission of  
8 ComEd's Cross Exhibits 16, 17, 18, 19, 20 and 21.

9 JUDGE DOLAN: Any objections?

10 MR. REDDICK: Yes. Cross Exhibits 16, 17, 18,  
11 19, and 20 were not used to impeach Mr. Gorman.  
12 They are basically supplements to the surrebuttal  
13 testimony of ComEd, materials that they could have.  
14 And Ms. O'Brien suggested in at least one case  
15 actually have amended to the surrebuttal testimony.

16 I'm not sure that they do anything other  
17 than give ComEd one more chance to put things into  
18 the record. Certainly, they're offered to impeach  
19 Mr. Gorman. As to No. 21, Mr. Gorman testified he  
20 did not understand the exhibit. So I object to its  
21 admission as well.

22 JUDGE DOLAN: Okay.

1       MR. FOSCO: Your Honor, if I may, Staff, we take  
2 no position on 16 through 19. We would object to  
3 admission of ComEd Cross Exhibit 20. We don't  
4 think there's a foundation; the witness testified  
5 he had not seen the document before.

6               And I think the same objection would  
7 apply to ComEd Cross Exhibit 21, that the witness  
8 said he didn't review that analysis, so I don't  
9 think there's a foundation for introduction of this  
10 cross exhibit either.

11       JUDGE DOLAN: We're going to overrule on 16  
12 through 20. They're going to be admitted, but  
13 ComEd Cross Exhibit 21 is going to be rejected.

14       MR. REDDICK: Your Honor, could we have a few  
15 minutes?

16       JUDGE DOLAN: Certainly.

17 (Whereupon, a discussion was had off the record.)

18       JUDGE DOLAN: All right. Back on the record.

19               Counsel?

20       MR. REDDICK: Thank you, your Honor.

21

22

1 REDIRECT EXAMINATION

2 BY

3 MR. REDDICK:

4 Q. Mr. Gorman, during the cross-examination by  
5 Mr. Fosco, the counsel for the Commission Staff, he  
6 took you through several questions and an exhibit  
7 that was offered that focused on the mechanics of  
8 purchase accounting.

9 Do you recall those questions?

10 A. I do.

11 Q. And in your answers to Mr. Fosco, you  
12 suggested that you took a different approach from  
13 the approach taken by the Staff witness with  
14 respect to the capital structure. Could you tell  
15 me the approach that you took?

16 A. Yes. Again -- and I think I had the same  
17 objective as Staff witness Ms. Kight's had, and  
18 that was to identify the amount of Commonwealth  
19 Edison's capital that supports it's regulated  
20 transmission and distribution utility rate base.

21 And I did that by first looking at the  
22 total capital upon ComEd's balance sheet and that



1 was over \$11 billion. I looked at the test year  
2 rate base, that was \$6 billion. Clearly, you don't  
3 need \$11 billion of capital to finance a \$6 billion  
4 rate base.

5               So my next question was, Well, what's  
6 the difference? What's the major difference  
7 between rate base and capital? The major  
8 difference was a good will asset of about  
9 \$4.9 billion. The evidence in the record clearly  
10 shows that that \$4.9 billion good will asset is  
11 financed entirely by common equity.

12              So that good will is not a transmission  
13 distribution asset, it's financed with common  
14 equity, it's appropriate to carve that common  
15 equity out of capital structure and attribute it  
16 only to the good will asset. The good will asset  
17 when it was created, also created common equity  
18 from an accounting perspective at the time of the  
19 merge.

20              So when you take the common equity of  
21 ComEd of \$11 billion of capital and attribute that  
22 to the good will asset, you are left with

1 approximately 6 to \$7 billion in capital to finance  
2 a \$6 billion rate base. And that's typical of what  
3 one normally receives in reviewing the utilities  
4 actual capital structure and rate. They don't  
5 always match, but they're generally pretty close.

6               So in order to identify the capital on  
7 ComEd's balance sheet that supports utility rate  
8 base, I found it appropriate to remove the common  
9 equity supporting the good will asset; because,  
10 once again, the good will asset is not a  
11 transmission distribution asset.

12       **Q.** And, in your opinion, would you recommend  
13 that the Commission focus on the mechanics of  
14 accounting for good will and purchase accounting,  
15 or on the assets supporting the delivery services?

16       **A.** Well, the latter -- the objective here is  
17 to establish ComEd's cost of capital and in  
18 investing in utility assets. Common equity  
19 supporting good will is not a part of the cost.  
20 What is a part is the remaining common equity in  
21 all of the debt that Commonwealth has on its  
22 balance sheet to support transmission distribution

1 regulate utility rate base. That's the cost of  
2 carrying that rate base.

3               Since the objective in this proceeding  
4 is to measure, Commonwealth Edison's cost to  
5 providing regulated utility service, it's  
6 appropriate to look at its total capital, identify  
7 what part of that capital represents its cost of  
8 funding utility plant investments.

9               And the capital structure proposed by  
10 Staff witness Ms. Kight and supported by myself is  
11 the proper assessment of that capital supporting  
12 regulated utility rate base.

13       MR. REDDICK: Your Honors, may I have this  
14 marked as IIEC Redirect Exhibit 1?

15                               (Whereupon, IIEC Redirect  
16                               Exhibit No. 1 was marked  
17                               for identification as of  
18                               this date.)

19 BY MR. REDDICK:

20       Q.     Mr. Gorman, I'm showing you what's been  
21 marked for identification as IIEC Redirect  
22 Exhibit 1.

1                   Is this a schedule that you prepared?

2       **A.**     It is.

3       **Q.**     And does it summarize the discussion that  
4     you've just offered in response to my questions  
5     explaining why capital supporting the TMD rate base  
6     is the proper focus in this proceeding?

7       MS. POLEK-O'BRIEN: I object. I'm not sure what  
8     this is redirect of. Mr. Fosco didn't, through his  
9     cross, criticize this in any way.

10                  I'm not -- it's just inappropriate  
11     redirect and additional continued cross.

12       MR. REDDICK: Mr. Fosco in his questions was  
13     attempting to -- as I understood from his  
14     cross-examination -- to get Mr. Gorman to respond  
15     to Ms. Kight's approach to defining the capital  
16     structure.

17                  As I understood her approach, it's  
18     primarily one dealing with accounting mechanics,  
19     how do we account for good will, how do we deal  
20     with the purchase accounting. Mr. Gorman took a  
21     different approach although they ended up in the  
22     same place.

1           I think it's essential that we clarify  
2   in the record differences between those two  
3   approaches because although they reach the same  
4   result, attacks on one approach should not be  
5   construed to be an attack on the other approach.

6           And I want to clarify that Mr. Gorman's  
7   analytics to get the result that he did are not the  
8   same as Ms. Kight's. So that there's no confusion  
9   that criticisms of accounting mechanisms would  
10   necessarily have an impact on Mr. Gorman's  
11   conclusion. This document does --

12       JUDGE DOLAN: We're going to overrule the  
13   objection.

14           Proceed.

15       THE WITNESS: I did prepare this exhibit to help  
16   illustrate my logic in supporting Staff's proposed  
17   capital structure. Then on Line 1, I showed the  
18   company's total outstanding capital. That's the  
19   amount of common equity and debt reflected on  
20   Mr. Mitchel's schedule supporting capital structure  
21   in this proceeding with one adjustment, and that is  
22   I added back in the \$2.292 billion of common equity

1 that Mr. Mitchell recommended removing from the  
2 common equity balance to arrive at their proposed  
3 rate-making capital structure.

4 When you add that \$2.292 billion back  
5 in, Commonwealth Edison has total common equity in  
6 that capital in the test year of 11 billion  
7 874 million dollars.

8 In the test year, they are proposing a  
9 rate base composed of much 6 billion 189 million  
10 dollars. The difference between the amount of  
11 capital in the company's filing and its T & D rate  
12 base in the test year is 5 billion 685 million  
13 dollars.

14 That additional capital clearly is not  
15 being used to finance transmission distribution  
16 utility rate base. What is it being used to  
17 finance? Mostly, the good will asset that I  
18 identified in my testimony. The good will has a  
19 balance of 4 billion 926 million dollars. So most  
20 of that incremental capital, that's the subject  
21 here, is financing the good will asset, which is a  
22 distinct asset and separate from the assets

1 included in the company's transmission and  
2 distribution regulated utility rate base.

3           Good will is supported by common equity.  
4 It's important to remove the common equity from the  
5 \$11 billion total capital to identify what  
6 capital's available to support, and the cost  
7 associated with financing, for regulated utility  
8 transmission and distribution utility rate base.

9 BY MR. REDDICK:

10       **Q.** Let me turn your attention to ComEd Cross  
11 Exhibits 19 and 20.

12           In connection with those exhibits,  
13 Ms. O'Brien asked you about the reasons for recent  
14 comments by rating agencies with respect to ComEd's  
15 credit risks.

16           I'm sorry. 18 and 20, my mistake.

17       MS. POLEK-O'BRIEN: Are you talking about the  
18 S&P?

19       MR. REDDICK: We're talking about the S&P and  
20 the S&P -- okay. What the fuel and purchase power  
21 cost recovery base, 20. And the -- 18 is the one  
22 with the Illinois regulators approval head.

1 BY MR. REDDICK:

2 Q. And in that connection, do you recall that  
3 Ms. O'Brien asked you whether those notices from  
4 rating agencies discussed the risks to ComEd with  
5 respect to legislative or regulatory activities?

6 A. They do.

7 Q. Do those same publications also discuss  
8 other sources of risks for ComEd?

9 A. They do. And, again, initially when  
10 Ms. O'Brien asked me this question, I identified  
11 two significant risks facing ComEd today. One is  
12 related to Exelon's proposed merger, PSEG.

13 S&P notes that that merger's for growth  
14 initiatives which represented investments risks,  
15 which is reflected in the credit ratings. And that  
16 is noted in these credit reports.

17 In ComEd Cross Exhibit 18, S&P states,  
18 The ratings remain on credit watch any deresolution  
19 of a number of issues, including completion of the  
20 merger with Public Service Enterprise Group. That  
21 risk is elaborated a little more in the credit  
22 report's attached to Mr. Mitchell's testimony in



1 this proceeding.

2                   On Exhibit -- ComEd Cross Exhibit 20,  
3 S&T makes a similar statement on Page 18, there it  
4 discusses ComEd's risk and states, The company in  
5 its parent and affiliates are current on credit  
6 watch with negative implications pending the  
7 completion of a merger with Public Service  
8 Enterprise Group.

9                   So clearly, there are two significant  
10 factors impacting ComEd's credit rating right now.  
11 That is for POLR procurement cost recovery risk,  
12 P-O-L-A-R (sic). And the implications associated  
13 with Exelon's proposed merger with PSEG.

14       MR. REDDICK: That concludes my redirect, your  
15 Honor.

16       JUDGE DOLAN: Any recross?

17       MS. POLEK-O'BRIEN: No, we're good. Thank you.

18       MR. FOSCO: None for Staff.

19       JUDGE DOLAN: All right. Thank you, Mr. Gorman.

20       MR. FOSCO: Actually, I do have one question,  
21 did we move admission of this document?

22       MR. REDDICK: Yes. Thank you.

1                   I do move the admission of IIEC Redirect  
2 Exhibit 1.

3       MS. POLEK-O'BRIEN:   And I object to his  
4 admission for the same reason I objected to the  
5 questions.

6       JUDGE DOLAN:   We're going to overrule it, and  
7 admit IIEC Redirect Exhibit No. 1.

8                               (Whereupon, IIEC.  
9                               Redirect Exhibit No. 1.  
10                              Was admitted into.  
11                              Evidence.)

12       MR. BRADY:   Staff calls Staff's witness,  
13 Mr. Ronald Linkenback.

14       JUDGE DOLAN:   Mr. Linkenback, please raise your  
15 right hand.

16                               (Witness sworn.)

17       JUDGE DOLAN:   Thank you.   Proceed, Counsel.

18

19

20

21

22

1 RONALD LINKENBACK,  
2 called as a witness herein, having been first duly  
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. BRADY:

7 Q. Mr. Linkenback, you provided testimony for  
8 this case, they were identified as ICC Staff  
9 Exhibit 8.0, and labeled as Direct Testimony with  
10 an e-Docket No. 159366, and filed on December 23rd,  
11 2005 -- I'm sorry. I read the wrong line.

12 159367 is the e-Docket number, and filed  
13 on December 23rd, 2005. You had two attachments to  
14 that. The first one is attachment 8.1, which has  
15 an e-Docket number of 159368. And attachment 8.2,  
16 which has an e-Docket number of 159369. Both of  
17 those were also filed on e-Docket on December 23rd,  
18 2005.

19 Mr. Linkenback also prepared rebuttal  
20 testimony, which has been identified as ICC Staff  
21 Exhibit No. 19.0, was filed on e-Docket on  
22 December -- on February 27th, 2006, and has an

1 e-Docket number of 165104.

2 Mr. Linkenback, do you have any  
3 corrections to those documents?

4 A. I do not.

5 Q. And if you were asked the same questions  
6 that are contained in those documents, would your  
7 answers be the same?

8 A. They would.

9 MR. BRADY: With that, your Honor, we move the  
10 documents that we've identified and have already  
11 been filed on e-Docket into the record.

12 JUDGE DOLAN: Any objection?

13 MR. REDDICK: No objection.

14 JUDGE DOLAN: Okay. All right.

15 ICC Staff Exhibit 8.0 along with  
16 Attachments 8.1 and 8.2 will be admitted into the  
17 record. And ICC Staff Exhibit 19.0 will also be  
18 admitted into the record.

19 (Whereupon, ICC Staff Exhibit No. 8.0 with  
20 Attachments 8.1 and 8.2 and ICC Staff Exhibit No.  
21 19.0 were admitted into evidence.)

22 JUDGE DOLAN: Proceed.

1 MR. BRADY: Thank you, your Honor.

2 And with that, we tender Mr. Linkenback  
3 for cross-examination.

4 CROSS-EXAMINATION

5 BY

6 MR. BERNET:

7 Q. Good afternoon, Mr. Linkenback --

8 A. Good afternoon.

9 Q. -- by a couple of minutes.

10 My name is Richard Bernet. I'm a  
11 counsel at one of the counsels for Commonwealth  
12 Edison. I just have a few questions for you.

13 Do you agree the Commission should  
14 decide this case based upon the facts presented in  
15 evidence in this case?

16 A. Yes, I do.

17 Q. In connection with the preparation of your  
18 testimony, did you review the direct testimony of  
19 ComEd Witness David DeCampli?

20 A. Repeat the name, please.

21 Q. David DeCampli.

22 A. Do you have the exhibit number?

1       **Q.**     I believe it was Exhibit 4.0.

2       **A.**     I do not remember looking at that, no.  
3     I may have.

4       **Q.**     Mr. DeCamppli was the ComEd witness that  
5     testified concerning the top 21 capital investments  
6     that ComEd has made since the last rate case.

7       **A.**     Thank you. Yes, I did.

8       **Q.**     Okay. I taught you did. And in connection  
9     with Mr. DeCamppli's testimony, Exhibit 1- --  
10    Exhibit 4.1 admitted into evidence, and  
11    Mr. DeCamppli's testimony was a DVD that  
12    Mr. DeCamppli prepared, did you review that?

13      **A.**     Yes, I did.

14      **Q.**     And you testified that the projects that --  
15    the 21 top capital additions that ComEd made since  
16    the last rate case, that those projects totaled  
17    approximately \$354 million?

18                   It's on Page 3 of your direct.

19      **A.**     That's correct.

20      **Q.**     And that's approximately 13 percent of the  
21    total rate base increase in this case?

22      **A.**     Correct.

1       **Q.**    You submitted a series of data requests to  
2   Commonwealth Edison Company concerning those top 21  
3   capital additions; isn't that right?

4       **A.**    Yes, I could.  I selected a representative  
5   portion of those 21.

6       **Q.**    And in Common- -- but you did submit data  
7   requests to ComEd in connection with that -- your  
8   analysis?

9       **A.**    Yes, I did.

10      **Q.**    And Commonwealth Edison answered those data  
11   requests?

12      **A.**    Yes, they did.

13      **Q.**    As a result of your analysis, you concluded  
14   that each of the capital additions described in  
15   Mr. DeCamp's testimony were used and useful,  
16   didn't you?

17      **A.**    Yes, I did.

18      **Q.**    And you also concluded that each of those  
19   21 capital additions were prudent investments?

20      **A.**    Again, I looked at a representative, and  
21   from that I assumed that the 21 were reasonable and  
22   prudent.

1       **Q.**     Let me ask you a question about Rider 8.  
2     If the Commission in its order in this case  
3     requires ComEd to provide a credit for  
4     customer-owned transformers, you agree that it is  
5     reasonable to limit such credit to those customers  
6     actually taking service under Rider 8 on the day of  
7     the Commission's order; isn't that right?

8       **A.**     Yes, I do.   Yeah.

9       **Q.**     Now, I'd like to ask you a few questions,  
10    Mr. Linkenback, about Rider POG.

11                   Can you tell us what POG means?

12       **A.**     It's a parallel operation of generation.  
13    It's for a qualified facility who has a facility on  
14    ComEd's service territory that wishes to sell that  
15    power to either ComEd or to PJM.

16       **Q.**     Okay.   And Rider POG is one of the riders  
17    ComEd proposes in this proceeding; isn't that  
18    right?

19       **A.**     That's correct.

20       **Q.**     Have you reviewed the surrebuttal -- excuse  
21    me.

22                   Have you reviewed the surrebuttal



1 testimony of Mr. Paul Crumrine, ComEd's director of  
2 regulatory strategies and services, ComEd  
3 Exhibit 40?

4       **A.**     Yes, I have.

5       **Q.**     Have you also reviewed the panel  
6 surrebuttal testimony of Larry Alongi and Tim  
7 McInerney, ComEd Exhibit 41?

8       **A.**     Yes, I did.

9       **Q.**     Do you continue to oppose ComEd's proposed  
10 Rider POG in this case?

11       **A.**     As of the last testimony by ComEd  
12 witnesses, yes, I do.

13       **Q.**     And that's those two exhibits I just  
14 described?

15       **A.**     Yes.

16       **Q.**     And you understand that ComEd is proposing  
17 that Rider POG replace its existing Rider 4; is  
18 that right?

19       **A.**     Correct.

20       **Q.**     A minute ago you testified about qualifying  
21 facilities.

22                Would you agree with me that qualifying

1 facilities are customers of ComEd that have the  
2 ability to generate energy and sell it into ComEd's  
3 grid?

4       **A.**     Yes. There's four requirements that define  
5 what a qualified facility is. But, yes, your  
6 general statement is correct.

7       **Q.**     Okay. And ComEd pays for the energy to  
8 Q- -- when we talk about qualified facilities, I  
9 might use the phrase or the acronym "QFs," and  
10 you'll understand that I mean qualified facilities  
11 when I say that?

12       **A.**     That sounds fine.

13       **Q.**     ComEd pays for the energy that QF sell to  
14 it, doesn't it?

15       **A.**     Under existing Rider 4, yes, they do.

16       **Q.**     Okay. And would you agree that these types  
17 of facilities typically generate less than 10  
18 megawatts?

19       **A.**     That, I don't know.

20       **Q.**     But you would agree that QFs have been in  
21 ComEd's service territory for many years?

22       **A.**     With that generalization, yes.

1       **Q.**    You're familiar with Part 430 of Title 83  
2 of the Illinois Administrative Code, right?

3       **A.**    Yes, I am.

4       **Q.**    And you refer to that in your testimony,  
5 right?

6       **A.**    Correct.

7       **Q.**    And that -- that code is entitled Purchase  
8 and Sale of Electric Energy from Cogeneration and  
9 Small Power Production Facilities; is that right?

10               I have an extra copy.

11       **A.**    I have one. Thank you.

12               That's correct.

13       **Q.**    And that section of the admin- -- you agree  
14 with me that that section of the Administrative  
15 Code governs the relationship between Commonwealth  
16 Edison and qualified facilities?

17       **A.**    Yes, that's the rules that the Commerce  
18 Commission looks at, the tariffs and riders that  
19 the utilities wish to put in place that places the  
20 qualified facility tariffs. Yes.

21       **Q.**    Okay. And you said you got a copy of that  
22 regulation in front of you. I'd like to direct

1 your attention to Section 430.80.

2 A. Got it.

3 Q. Do you have it?

4 That section of the regulation describes  
5 three types of contractual arrangements that are  
6 permissible between ComEd and a qualifying  
7 facility; is that your understanding?

8 A. At a quick glance, yes.

9 Q. And those three contractual arrangements  
10 are standard energy rate, negotiated energy rate,  
11 and negotiated energy and capacity rate; is that  
12 right?

13 A. Correct.

14 Q. And is it your understanding that ComEd's  
15 standard energy rate is that which is found in its  
16 existing Rider 4?

17 A. Yes.

18 Q. So a QF has the ability to enter into a  
19 contract with ComEd to sell energy to ComEd at a  
20 negotiated rate; isn't that right?

21 A. Correct, that's one of the three options.

22 Q. And the -- a QF also has the ability to

1 enter into a contract with ComEd to sell energy to  
2 ComEd at a negotiated energy and capacity rate,  
3 right?

4 **A.** Correct, the last -- latter two are both  
5 negotiated rates.

6 **Q.** Okay. And there's no limitation in the  
7 regulations on the length of a contract that ComEd  
8 and a qualified facility could enter into for a  
9 negotiated energy rate, is there?

10 **A.** Not that I know of.

11 **Q.** And there's also no limitation on the  
12 length of a contract that ComEd and a qualified  
13 facility could enter into for a negotiated energy  
14 and capacity rate; isn't that true?

15 **A.** That's correct.

16 **Q.** Now, in existing Rider 4, ComEd lists in  
17 cents per kilowatt hour the price that it will pay  
18 to QF for energy -- that a QF sells to ComEd; is  
19 that right?

20 **A.** Right.

21 **Q.** And that's listed in peak and off-peak  
22 periods?

1       **A.**    Yeah, it's peak and off-peak and seasonal.

2       **Q.**    Summer and winter?

3       **A.**    Yes.

4       **Q.**    So there's four prices set forth in

5 Rider 4?

6       **A.**    I think that's correct.

7       **Q.**    And each June 30th, ComEd is required to

8 revise its Rider 4 rates; isn't that true?

9       **A.**    Correct, as an annual revision.

10       **Q.**   And when ComEd revise those rates, those

11 rates stay in effect for 12 months; isn't that

12 right?

13       **A.**    Correct.

14       **Q.**    So ComEd's rates in Rider 4 change every

15 year?

16       **A.**    That's the way it's been historically.

17       **Q.**    Now, I'd like to direct your attention to

18 the definition section of section -- Part 430. I'm

19 sorry. It's 430.30.

20               Section 430 requires ComEd to set its

21 standard energy rate based upon its avoided energy

22 costs; isn't that right?

1       **A.**     And which definition are you looking at to  
2     come up with that statement?

3       **Q.**     Well, I'm actually not looking at a  
4     definition.  If you take a look at 430.60, please  
5     --

6       **A.**     Repeat the question again.

7       **Q.**     Sure.  Section 430.60 of the Administrative  
8     Code requires ComEd to set its standard energy rate  
9     based upon its avoided energy costs, right?

10      **A.**     That's correct.

11      **Q.**     Okay.  Now, I'd like you to turn back to  
12     the definition section, please.

13                     Can you read the definition of "avoided  
14     energy costs," please.

15      **A.**     Avoided energy costs -- you want me to read  
16     out loud?

17      **Q.**     Yeah, please.

18      **A.**     The avoided variable costs solicited with  
19     the provision of -- energy.  These costs represent  
20     the avoided costs of fuel and some operating and  
21     maintenance expenses or the costs of purchasing  
22     energy.

1                   Identifiable capacity charges included  
2   in the purchase power agreements shall not be  
3   included in the affirmation of avoided energy  
4   costs.

5       **Q.**     So what this means is that when a QF sells  
6   energy to ComEd, that energy displaces energy to  
7   ComEd with would otherwise have to purchase, right?

8       **A.**     Yes yeah.

9       **Q.**     Since 2001, ComEd has based its avoiding  
10   costs on the cost that it pays for power under the  
11   power purchase agreement that ComEd has with one of  
12   its affiliates; isn't that right?

13       **A.**     That is. I'm not too sure of the 2001, but  
14   as of currently, the last few years, that is true.

15       **Q.**     Well, at least for 2002 through the  
16   present, right?

17       **A.**     Correct.

18       **Q.**     Okay. And that contract -- that power  
19   purchase agreement expires on December 31st, 2006,  
20   doesn't it?

21       **A.**     That is correct.

22       **Q.**     Beginning on January 1st, 2007, under



1 ComEd's proposed Rider POG, ComEd's avoided costs  
2 will be based upon the PJM spot market price; isn't  
3 that right?

4 **A.** That's what the Rider POG says.

5 **Q.** And you agree that the methods to determine  
6 the avoided cost values described in Rider POG is  
7 reasonable, don't you?

8 **A.** I think that means the definition of  
9 avoided costs very well, yes.

10 **Q.** And you agree that the PJM spot market  
11 price is an hourly energy price, right?

12 **A.** Again, that's information that -- provided  
13 by ComEd, yes.

14 **Q.** But you understand that independently,  
15 right?

16 **A.** Pardon?

17 **Q.** You understand that the PJM spot market  
18 price varies --

19 **A.** I don't -- I don't know first hand, but I  
20 think it seems reasonable.

21 **Q.** Do you know whether or not spot prices are  
22 volatile?

1       **A.**     No, I do not.

2       **Q.**     Staff -- your testi- -- in your testimony  
3     you, claim that ComEd should continue to provide  
4     fixed rates in Rider POG that remain locked in for  
5     12 months at a time, right?

6       **A.**     Repeat, please.

7       **Q.**     Sure. You -- in your testimony, you take  
8     the position that ComEd should continue to provide  
9     fixed rates in Rider POG that would remain in place  
10    for a period of 12 months at a time?

11      **A.**     I think that's a good generalization, yes.

12      **Q.**     And you also agree -- strike that.

13                You responded to data requests that  
14    ComEd sent to you regarding Rider POG, didn't you?

15      **A.**     Yes, I did. Are we talking about the  
16    latest one, 9.0 --

17      **Q.**     Yeah, the nine series.

18      **A.**     Thank you. Yes, I did.

19      **Q.**     And you agree that if your proposal is  
20    accepted and a fixed annual avoided cost rate is  
21    established for Rider POG payments to QFs, that  
22    avoided cost rate may not equal ComEd's actual cost

1 of the energy displaced by such purchases, right?

2 A. That's correct, it's unknown.

3 Q. Let me direct your attention to your  
4 rebuttal testimony, Page 2. And, specifically,  
5 Riders -- I mean -- Riders -- Lines 43 through 46.

6 A. Okay.

7 Q. You testified that Rider POG does not  
8 include long-term forward-looking rate information,  
9 and that the lack of that information is likely to  
10 reduce the number of small generating facilities  
11 who choose to operate ComEd's service territory,  
12 right?

13 A. Correct.

14 Q. And when you say "long-term forward-looking  
15 rate information," you're talking about a 12-month  
16 period there, right?

17 A. 12-month versus an hour.

18 Q. In connection with this the preparation of  
19 your testimony -- strike that.

20 No qualified facility -- or qualifying  
21 facility intervened in this case, did they?

22 A. Not that I know of.

1       **Q.**     And there was no preclusion -- there was  
2     nothing barring a qualifying facility from  
3     intervening in this case and asserting that it  
4     disagreed with ComEd's proposal regarding Rider  
5     POG, right?

6       MR. BRADY:   I'm going to object.   It calls for  
7     speculation.   It asks for him to identify why a QF  
8     would actually intervene in this case.

9       JUDGE DOLAN:   The objection is sustained.

10     BY MR. BERNET:

11     **Q.**     Your conclusion about QFs needing long-term  
12     rate information in order to decide whether to  
13     operate ComEd's service territory is not based upon  
14     any survey of QFs, is it?

15     **A.**     No.   And, again, it's the future qualified  
16     facilities those that may consider to operate in  
17     ComEd service territory, not existing qualified  
18     facilities.

19     MR. BERNET:    I move to strike everything after  
20     "no."

21     JUDGE DOLAN:   Granted.

22     MR. BERNET:    I'm sorry?

1 JUDGE DOLAN: It's granted. We'll strike that.

2 BY MR. BERNET:

3 Q. Let me ask it again.

4 Your conclusion about QFs needing

5 long-term rate information in order to decide

6 whether to operate in ComEd's service territory is

7 not based upon any survey of QFs, is it?

8 A. I did not survey existing QFs.

9 Q. You didn't survey any QFs, did you?

10 A. No.

11 Q. In fact, in connection with the preparation

12 of your testimony, you had no communications with

13 any QFs on the subject of Rider POG; isn't that

14 right?

15 A. That's correct.

16 MR. BERNET: No further questions.

17 JUDGE DOLAN: Any redirect?

18 MR. BRADY: Just one question, your Honor.

19

20

21

22

1 REDIRECT EXAMINATION

2 BY

3 MR. BRADY:

4 Q. Mr. Linkenback, to your knowledge -- well,  
5 you recall Mr. Bernet was asking you about whether  
6 you had contacted qualifying facilities? Do you  
7 recall that line of questioning?

8 A. Yes, I do.

9 Q. Are you aware of whether ComEd had  
10 contacted any qualifying facilities?

11 A. No, I do not (sic).

12 MR. BRADY: No further questions.

13 MR. BERNET: Nothing more.

14 JUDGE DOLAN: Thank you, Mr. Linkenback.

15 MR. BERNET: Thank you, Mr. Linkenback.

16 JUDGE DOLAN: Mr. Brady, you just want to take  
17 care of --

18 MR. BRADY: Mr. Spencer?

19 JUDGE DOLAN: -- Mr. Spence and then we'll take  
20 a lunch break.

21 MR. BERNET: We waive Mr. Spencer.

22 JUDGE DOLAN: I know, but he wants to introduce

1 his exhibits.

2 MR. BERNET: Oh, okay.

3 MR. BRADY: Yes, we have some -- I acknowledge  
4 that the -- there's no cross-examination for  
5 Mr. James Spencer.

6 We want to -- Staff will be filing an  
7 affidavit for Mr. Spencer sponsoring Staff  
8 Exhibit 9.0, which is his direct testimony and two  
9 attachments, Schedules 9.1 and 9.2. I have copies  
10 of the affidavit now, or we could just file this  
11 affidavit into the record and then identify it as a  
12 new Staff exhibit, if that is the way you would  
13 prefer.

14 JUDGE DOLAN: Yeah, why don't you do it that  
15 way.

16 MR. BRADY: Okay. So then we would identify the  
17 affidavit of James D. Spencer as ICC Staff  
18 Exhibit 21.0. And we'll file that later on today,  
19 therefore, we don't have the e-Docket number at  
20 this time.

21 JUDGE DOLAN: Okay. Any objection?

22 MR. BERNET: No objection.

1 JUDGE DOLAN: All right. So we have ICC Staff  
2 Exhibit 9.0, along with ICC Staff Exhibit 9.1 and  
3 ICC Staff Exhibit 9.2 will be admitted into the  
4 record along with ICC Staff Exhibit 21.0, which  
5 also will be admitted into the record.

6 MR. BRADY: And just as a point of  
7 clarification, maybe I -- there's Schedules 9.1 and  
8 9.2 so maybe I misspoke.

9 JUDGE DOLAN: Okay. No, you didn't. Okay.  
10 Schedule 9.1 and 9.2.

11 (Whereupon, ICC Staff  
12 Exhibit Nos. 9.0, 9.1,  
13 9.2 and 21.0 were  
14 admitted into evidence.)

15 MR. BRADY: Thank you.

16 JUDGE DOLAN: Thank you. And with that, we're  
17 going to take a break until 1:15. We'll reconvene.

18 (Whereupon, a lunch break  
19 was had.)  
20  
21  
22



1                   AFTERNOON SESSION:   1:15 P.M.

2           JUDGE DOLAN:   All right.   Back on the record.

3                   Counsel, you ready to proceed?

4           MR. BERNSTEIN:   We are.

5           JUDGE DOLAN:   Okay.

6           MR. BERNSTEIN:   Our next witnesses are Messes

7   Fernandes and McCauley appearing as a panel.

8           JUDGE DOLAN:   All right.

9                   Gentlemen, you want to raise your right

10   hand.

11                               (Witness sworn.)

12          JUDGE DOLAN:   Thank you.

13          MR. BERNSTEIN:   For the record, my name is

14   Eugene Bernstein appearing on behalf of

15   Commonwealth Edison Company this afternoon.

16                   Mr. Fernandes and McCauley sponsored

17   only two pieces of testimony.   They did not put in

18   direct testimony.   They put in rebuttal testimony

19   and surrebuttal testimony.

20                   Their rebuttal testimony is ComEd

21   Exhibit 28.0 dated and it's filed January 30th,

22   2006, and there are three attachments, A, B and C,

1 to that testimony as well.

2                   Their surrebuttal testimony was dated  
3 and filed March 14, 2006 as ComEd Exhibit 44.0.  
4 And there are two attachments, I believe, to that  
5 testimony -- no, actually there's three.

6           JUDGE DOLAN: Three.

7           MR. BERNSTEIN: We move the admission into  
8 evidence of those two exhibits, tender Messers  
9 McCauley and Fernandes for cross-examination.

10          JUDGE DOLAN: Well, Mr. Bernstein, for purposes  
11 of panel testimony, we've been holding off until  
12 they testify just so it's clear on who's doing  
13 what.

14                   So if you would just remember that at  
15 the end -- these exhibits, okay?

16                   Mr. Balough -- or you're going to go  
17 first? Okay.

18          MR. POWELL: Yes, your Honor.

19                   Thank you.

20                   ALLAN FERNANDES and PETER McCAULEY,  
21 called as a witness herein, having been first duly  
22 sworn, was examined and testified as follows:

1 CROSS-EXAMINATION

2 BY

3 MR. POWELL:

4 Q. Good afternoon, Mr. Fernandes,  
5 Mr. McCauley. My name is Mark Powell. I represent  
6 the City of Chicago in this matter and I have some  
7 questions. They all relate specifically to your  
8 testimony.

9 I'd like to start with your rebuttal  
10 testimony. Specifically, Page 14, Lines 306 to 08.

11 JUDGE DOLAN: I'm sorry. Proceed.

12 BY MR. POWELL:

13 Q. Are you there?

14 WITNESS MCCAULEY: Yes.

15 WITNESS FERNANDES: Yeah.

16 Q. There, you state that allowing rider  
17 recovery of MGP remediation costs would provide  
18 ComEd with flexibility to respond to environmental  
19 remediation and clean up needs quickly and  
20 thoroughly and remove any financial disincentives  
21 to do so.

22 Did I say that correctly?

1                   Now, are you saying that unless proposed  
2 Rider ECR is approved, ComEd might not respond to  
3 environmental remediation and clean-up needs quick  
4 and thoroughly?

5       WITNESS FERNANDES: Could you please repeat that  
6 first question? Because you mentioned MGP,  
7 counsel. I don't believe that's represented in  
8 this line in here.

9       Q. Okay. You state with respect to  
10 environmental remediation costs that a rider  
11 recovery, such costs would provide ComEd with the  
12 flexibility to respond to environmental remediation  
13 cleanup needs quickly and thoroughly and remove any  
14 financial disincentive to do so; is that correct?

15       WITNESS FERNANDES: That is correct.

16       Q. And my question was, are you saying that  
17 here, that unless proposed Rider ECR is approved,  
18 ComEd might not respond to environmental  
19 remediation and cleanup needs quickly and  
20 thoroughly?

21       WITNESS FERNANDES: No, that's not what the  
22 report is saying. I do believe it's saying that we

1 would continue to respond regardless of whether we  
2 get or do not get the rider ECR.

3 Q. Okay. And that -- turning to Page 7, Line  
4 143 of your rebuttal testimony.

5 MR. BERNSTEIN: I'm sorry. May have that  
6 reference again?

7 MR. POWELL: Sure. Page 7, Line 143, rebuttal.

8 BY MR. POWELL:

9 Q. Are you there?

10 WITNESS FERNANDES: Yes, I am.

11 Q. You state that ComEd does not have  
12 discretion to ignore federal and state  
13 environmental laws and, thus, to avoid the costs;  
14 is that correct?

15 WITNESS FERNANDES: That is correct.

16 Q. Now, would you agree that ComEd has  
17 discretion to pursue other potentially responsible  
18 parties or PRPs, if there are any?

19 WITNESS FERNANDES: Yes, and we do do that  
20 during these remediation.

21 Q. Would you also agree that if another party,  
22 another PRP asserts that ComEd is liable under

1 federal and state environmental laws, ComEd has --

2 ComEd has discretion to challenge that assertion?

3 WITNESS FERNANDES: I'm sorry. Could you please

4 that question?

5 BY MR. POWELL:

6 Q. Sure. Sure.

7 Would you agree if another party asserts

8 that ComEd is liable under federal and state

9 environmental laws, ComEd would have the option of

10 challenging that assertion?

11 WITNESS FERNANDES: Yes.

12 Q. Now, turning to Page 9 of your rebuttal

13 testimony, Line -- Lines 192 to 94. You state that

14 to make property once used for transmission and

15 distribution of electricity, i.e., substations and

16 service centers, marketable, ComEd must ensure

17 environmental conditions are perfect for future

18 development.

19 Did I read that correctly?

20 WITNESS FERNANDES: Yes, you did.

21 Q. Is it your testimony that ComEd should be

22 able to recover through a rider costs it incurs to

1 make property marketable?

2 WITNESS FERNANDES: Well, I do believe that  
3 Mr. Crumrine more appropriately addresses that  
4 because my understanding of the rider would be  
5 there would be an annual reconciliation here as to  
6 prudence of the incurred costs.

7 Q. Okay. And turning to Pages 15 to 16 of  
8 your rebuttal testimony. You discuss various  
9 procedures ComEd has in place to minimize  
10 environmental costs; is that correct?

11 WITNESS FERNANDES: That is correct.

12 Q. Is it your testimony that ComEd is not  
13 required by law to maintain and adhere to these  
14 procedures?

15 WITNESS FERNANDES: I'm sorry. Could you please  
16 repeat that again?

17 Q. Sure. Is it your testimony that the  
18 procedures you've described on Pages 15 and 16 of  
19 your rebuttal testimony that ComEd has in place  
20 minimize environmental costs, is it your testimony  
21 that ComEd is not required by law to maintain those  
22 procedures?

1       MR. BERNSTEIN: I think I'm going to have to  
2 observe to the extent that calls for a legal  
3 conclusion.

4               I'm not sure what you mean by "required  
5 by law." I'm a lawyer and I don't know what it  
6 what it means. I doubt the witness knows what it  
7 means.

8       JUDGE DOLAN: Can you rephrase the question?

9 BY MR. POWELL:

10       Q. Sure. Is it your testimony that the  
11 procedures you've described ComEd has in place,  
12 that ComEd undertook these -- put them in place  
13 voluntarily?

14       WITNESS FERNANDES: Yes, it is the -- known part  
15 of doing business in terms of trying to minimize  
16 the costs on these remediation sites.

17       Q. I'd like to turn now to Attachment C to  
18 your rebuttal testimony, which -- do you have it?

19       WITNESS FERNANDES: Are you referring to the  
20 federal and state environmental laws?

21       Q. Yes. Yes.

22       WITNESS FERNANDES: All right.



1       Q.     And that attachment, Attachment C,  
2 identifies various federal and state environmental  
3 laws and the dates on which they were amended; is  
4 that correct?

5       WITNESS McCAULEY:   Correct.

6       Q.     Now, does the fact that you included a  
7 particular federal or state environmental law on  
8 this chart mean that you believe ComEd is liable or  
9 is potentially liable under that particular law?

10       WITNESS FERNANDES:   It may apply to some of  
11 these laws.   What we were trying to show is that  
12 these laws are constantly changing and that we have  
13 to comply with these existing laws and the changing  
14 laws.

15               So some of them may or may not apply.   I  
16 won't say all of them apply to all sides, but this  
17 is a general overview of the changing environment  
18 of developing laws and regulations.

19       Q.     Okay.   Specifically, ComEd is not currently  
20 incurring any environmental costs that would be  
21 subject to proposed Rider ECR under the Clean Air  
22 Act; is that correct?

1           WITNESS McCAULEY: To the best of my knowledge,  
2   that's correct.

3           WITNESS FERNANDES: And it is my understanding,  
4   too, that is correct.

5           Q.     And, similarly, ComEd is not incurring  
6   costs under the Safe Drinking Water Act at this  
7   time; is that correct?

8           WITNESS McCAULEY: To the best of my knowledge.

9           WITNESS FERNANDES: Well, if you look at  
10   drinking water, I mean, if you have a site that has  
11   contamination and it impacts a potable water supply  
12   source, you could be under the Safe Drinking Water  
13   Act.

14                   But at the present time, I guess you can  
15   say we don't have any of the sites that are under  
16   the Safe Drinking Water Act.

17           Q.     Thank you.

18                   I'd like to ask you to refer to your  
19   surrebuttal testimony now, Page 6, Lines 124  
20   through 26. There, you state that when multiple  
21   parties, including both regulated and unregulated  
22   parties, are collectively working at remediating a

1 contaminated site, any incentives to minimize costs  
2 that competitive businesses have will be reflected  
3 within the entire group.

4 Did I read that correctly?

5 WITNESS McCAULEY: Correct.

6 WITNESS FERNANDES: Yes, you did read that  
7 correctly.

8 Q. Would you agree that PRPs, whether they are  
9 regulated or unregulated, have an incentive to  
10 minimize their own remediation costs?

11 WITNESS FERNANDES: Well, it does depend with --  
12 on which program you are on under; but, overall, I  
13 would say we would like to minimize the costs on  
14 the project.

15 Sometimes the projects are mandated by  
16 the government and they would provide you with the  
17 remediation and the type of remediation that needs  
18 to be completed. And then, basically, you're --  
19 you are under -- order sometimes. And at that  
20 time, you may not have an opportunity to minimize  
21 the cost.

22 But, overall, yes, we would like to --

1 the group would like to minimize that cost on the  
2 project?

3 Q. When you say "group," do you mean the other  
4 PRPs?

5 WITNESS FERNANDES: That is correct. The other  
6 PRPs. That's what I mean by group.

7 MR. POWELL: Thank you.

8 I have nothing further.

9 JUDGE DOLAN: Thank you.

10 Mr. Reddick?

11 CROSS-EXAMINATION

12 BY

13 MR. REDDICK:

14 Q. Mr. Fernandes, my name is Conrad Reddick  
15 and I'm representing the IIEC, the Illinois  
16 Industrial Energy Consumers.

17 In your testimony, you refer to  
18 incremental environmental cost. What's that term  
19 mean?

20 WITNESS FERNANDES: It is my understanding, and  
21 I know Mr. Crumrine will further elaborate on this,  
22 but my understanding is the costs that are incurred

1 by the Company in association with environmental  
2 activities at a particular site.

3 WITNESS McCAULEY: Basically, outside costs. It  
4 doesn't include our internal management costs.

5 Q. It would, for instance, include  
6 subcontractors costs, but not your salary?

7 WITNESS McCAULEY: Correct.

8 Q. And the distinction that you're making for  
9 incremental means, basically, outside the Company's  
10 usual complement of employees and activities?

11 WITNESS FERNANDES: Well, I know there's a  
12 definition that's been defined in the rider. Like  
13 I said, Mr. Crumrine would better be able to  
14 provide you with the exact definition.

15 My understanding is it's a cost that's  
16 incurred by the company associated with the  
17 activities on a remediation site.

18 Q. Do you believe that ComEd has been diligent  
19 in its environmental remediation efforts over the  
20 years?

21 WITNESS FERNANDES: I'm sorry. Could you please  
22 repeat that.

1       Q.     Sure.  Do you agree that ComEd has been  
2 diligent in its environmental remediation efforts  
3 over the years?

4       WITNESS FERNANDES:  Absolutely.

5       Q.     And part of that diligence was to identify  
6 potential sites where remediation might be  
7 required?

8       WITNESS FERNANDES:  Well, it depends if you're  
9 talking about just MGP or nonMGP sites.

10      Q.     Do you use them differently?

11      WITNESS FERNANDES:  Well, the -- we don't -- the  
12 contaminants are the same, whether it's an MGP or a  
13 nonMGP.  We consider it as an environmental  
14 remediation site.  And the laws that we have to --  
15 the regulation that we are under are the same.

16             And so we have to clean it up to the  
17 same standards that are promulgated by the agency  
18 of the agency, whether it's MGP or nonMGP site.

19      Q.     Are you equally diligent whether the  
20 potential contamination is at an MGP or nonMGP  
21 site?

22      WITNESS FERNANDES:  Absolutely.

1       Q.     And you've done it to the best of your  
2     ability?

3       WITNESS FERNANDES:   Absolutely.

4       Q.     Okay.   Would another aspect of your  
5     environmental remediation activities be to design  
6     remediation programs to meet those responsibilities  
7     under the various laws and regulations you cite?

8       WITNESS FERNANDES:   Could you please repeat that  
9     one more time?

10      Q.     Would another aspect of your environmental  
11     remediation efforts be to design programs that  
12     would allow you to comply with your  
13     responsibilities under the various laws and  
14     regulations that you cite in your testimony?

15      WITNESS FERNANDES:   Yes.

16      Q.     When I say "program," I mean a planned  
17     sequence of remediation activities.  Is that  
18     consistent with your understanding of what a  
19     program to remediate environmental contaminants  
20     would be?

21      WITNESS FERNANDES:   For the MGP sites, yes.  But  
22     for the nonMGP sites, the broad range of sites.

1 And some of them involve the day-to-day response to  
2 emergencies, but we do have contractors in place  
3 that can respond to us and make sure that we are  
4 cleaning up the sites.

5                   So if you want to call that a program,  
6 yes, I would say that would be considered a  
7 program.

8       **Q.**     And do the programs --

9       WITNESS McCAULEY: I was just going to mention  
10 as it applies to the cleanup of a site, because the  
11 inherent uncertainties with these sites is that  
12 really, the -- we have to take a step-by-step  
13 approach, and we don't know what we're going to  
14 be -- the outcome is going to be until we  
15 investigate the site, develop remedial objectives,  
16 develop a cleanup plan for the other stakeholders  
17 (sic).

18                   So we don't have a scheduled plan in  
19 place at the beginning of a project. That develops  
20 as we go through the process.

21       **Q.**     No, of course not. But -- but would you  
22 agree that your diligent environmental remediation



1 efforts would mean that you would, in fact, do the  
2 things that you just described. You would  
3 investigate the site. You would develop a program  
4 to remediate the site and you would move forward  
5 with that?

6 WITNESS McCAULEY: That is the -- correct.

7 Q. Correct.

8 And --

9 WITNESS FERNANDES: But -- excuse me. I'm  
10 sorry. That's the approach for the MGP sites,  
11 typically. Like I said, we have day-to-day  
12 responses that we have for the nonMGP sites.

13 Q. Emergencies aside.

14 WITNESS FERNANDES: Okay. I just want to  
15 clarify that.

16 Q. When you reach the point of putting in  
17 place a remediation program that is a planned  
18 sequence of activities to remediate a particular  
19 site, MGP or nonMGP, does that only -- I'm sorry --  
20 does that also involve projection of costs for  
21 remediation and expenditures and establishing  
22 budgets on some regular cycle?

1           WITNESS FERNANDES:  The estimates that we put in  
2   place are based on a point in time, and those  
3   estimates constantly change once we get more  
4   information from a particular site.

5                   And as a result of it, - it shows -- I  
6   mean, our costs basically change constantly; but,  
7   yeah, we do budget for the year based on what we  
8   projected to have completed.  But based on the  
9   information that we gather during the course of the  
10  investigation, our costs also change.

11       Q.     And that's true of any budgeting  
12  activities, isn't it?

13       WITNESS FERNANDES:  It could be.

14       MR. REDDICK:  Nothing further.

15                   Thank you.

16       JUDGE DOLAN:  Thank you.

17                   CROSS-EXAMINATION

18                   BY

19                   MR. FEELEY:

20       Q.     Good afternoon.  Mr. Fernandes,  
21  Mr. McCauley.  My name is John Feeley and I  
22  represent the Staff.  I have a few questions for

1    you.

2           WITNESS FERNANDES:   Good afternoon.

3           WITNESS McCAULEY:   Good afternoon, John.

4           Q.     If I could direct your attention to your  
5   surrebuttal testimony, Pages 2 through 3.  Do you  
6   have that in front of you?

7           WITNESS McCAULEY:   Yes.

8           WITNESS FERNANDES:   Yes, I do.

9           Q.     On those pages, you discuss the volatility  
10  of MGP and nonMGP costs, correct?

11          WITNESS McCAULEY:   Correct.

12          Q.     And --

13          WITNESS FERNANDES:   That's right.

14          Q.     -- also direct your attention to your  
15  Attachments 1 and 2 to your surrebuttal testimony.  
16                   Do you have those?

17          WITNESS McCAULEY:   Yes.

18          WITNESS FERNANDES:   Yes.

19          Q.     And in those Attachments 1 and 2, you're  
20  also trying to represent what you find to be  
21  volatility between MGP and nonMGP costs, correct?

22          WITNESS FERNANDES:   Well, it shows separately

1   that their -- that their costs are volatile for MGP  
2   as well as nonMGP costs.  It's not between MGP and  
3   nonMGP.

4                   I don't know.  Maybe I misunderstood the  
5   question.

6       **Q.**    You're -- you're attempting to show that  
7   both are, in your opinion volatile, correct?

8       WITNESS FERNANDES:  Absolutely.

9       **Q.**    Okay.  If you can look at your  
10   Attachment 1, and you have a chart there -- well,  
11   there's a chart, one showing MGP costs and other  
12   nonMGP costs, correct?

13       WITNESS FERNANDES:  That is correct.

14       **Q.**    And for the MGP costs, the scale on your  
15   chart is what?  It's approximately five million; is  
16   that correct?

17       WITNESS FERNANDES:  Yes.

18       **Q.**    So the vertical axis you're showing  
19   increments of five million dollars, correct?

20       WITNESS FERNANDES:  That is correct.

21       **Q.**    Okay.  And the chart for nonMGP costs, the  
22   scale there is in 500,000, correct?

1       WITNESS FERNANDES:   That is correct.

2       **Q.**     Okay.   Now, if the same scale had been used  
3   for both charts, that is, if you had used for your  
4   nonMGP costs a scale of five million, which was the  
5   scale that you used on your MGP costs, what  
6   would -- what would the chart look like for the  
7   nonMGP costs?

8       **A.**     I don't have a computer in front of me, but  
9   I think it would show the same thing.   There's  
10  volatility in the cost.

11      **Q.**     Well, wouldn't that line graft that you're  
12  showing be basically almost flat to get to a five  
13  million scale versus a 500,000 scale that you're  
14  using?

15      WITNESS FERNANDES:   Well, I haven't charted it.  
16  And, like I said, I still don't believe it would be  
17  flat.   It would still show a fluctuation, if you  
18  look at the actual numbers.

19      **Q.**     Well, you would -- would the -- with the  
20  graphic representation, it would be different,  
21  wouldn't it, for putting on MGP when you use a five  
22  million dollar scale versus a \$500,000 scale?

1 WITNESS FERNANDES: Yeah, I mean it would be  
2 different.

3 Q. It would be different.

4 And if you went on your MGP cost chart,  
5 if you used the \$500,000 increment instead of a  
6 five million, wouldn't that chart be more extreme  
7 than what you're showing there?

8 MR. BERNSTEIN: It wouldn't fit on the page.

9 MR. FEELEY: I'm sorry?

10 MR. BERNSTEIN: It wouldn't fit on the page.

11 MR. FEELEY: Well, are you adopting that answer  
12 as your counsel.

13 MR. BERNSTEIN: No, I was making a sarcastic --

14 WITNESS FERNANDES: No.

15 MR. BERNSTEIN: Strike that.

16 WITNESS FERNANDES: It would be different  
17 than --

18 BY MR. FEELEY:

19 Q. And would be a -- the graphic  
20 representation would show a drastic change,  
21 correct, compared to the nonMGP costs?

22 WITNESS FERNANDES: It would show a drastic

1 change, but let me mention something --

2 Q. Thank you.

3 Would you agree -- now, if we could look  
4 at your Attachment 2. There, you have figures  
5 again for MGP and nonMGP costs, correct?

6 WITNESS FERNANDES: I'm sorry. What are you  
7 referring to, please?

8 Q. Your Attachment 2, that table that you  
9 have.

10 WITNESS FERNANDES: Okay.

11 Q. You have figures there for MGP costs and  
12 then another table for nonMGP costs, correct?

13 WITNESS FERNANDES: That is correct.

14 Q. Okay. Would you agree, subject to check,  
15 that the percentage changes in MGP costs for the  
16 period shown on your Attachment 2 range from a  
17 decrease of approximately 74.25 percent to an  
18 increase of approximately 103 percent?

19 WITNESS FERNANDES: That would be subject to me  
20 doing the calculation, but I haven't done that out  
21 here.

22 Q. Do you have a calculator?

1 MR. BERNSTEIN: Mr. Feeley, for the sake of  
2 giving the witness some fair opportunity to check  
3 this, how did you make the calculation? What is  
4 the base that -- the calculating percentage from --  
5 off what?

6 MR. FEELEY: From what period to the next.

7 MR. BERNSTEIN: So your starting point is the  
8 first year --

9 MR. FEELEY: Yes.

10 MR. BERNSTEIN: -- in each case?

11 MR. FEELEY: No. To go from -- you're looking  
12 at one year. 2001 to 2002, what's the percentage  
13 change?

14 WITNESS FERNANDES: Are you looking at nonMGP or  
15 MGP costs?

16 Q. My first question was about MGP costs.

17 WITNESS FERNANDES: Okay.

18 MR. McCAULEY: The range that you had provided  
19 us again?

20 Q. A decrease of 74.25 percent to an increase  
21 of 103.3 percent.

22 WITNESS FERNANDES: I don't understand where



1 you're getting the decrease of -- if you starting  
2 at 2001, we had 11.4 million dollars moving out of  
3 2002, 29.2. And --

4 Q. Looking at from one year to the next. Look  
5 at 2001 to 2002. What's the change? Then go to  
6 2002 to 2003. What's the change? Then 2003 to  
7 2004, what's the change?

8 WITNESS FERNANDES: To me, it looks like about  
9 an 80 to 90 percent increase from 2002 to 2002.  
10 From 2002 to 2003, it's about 103, 104 percent.  
11 And then there's a decrease of.

12 WITNESS McCAULEY: What was the figure you -- 75  
13 percent, was it, or 78 percent?

14 Q. Just under 75 percent.

15 WITNESS FERNANDES: That's what looks like --

16 WITNESS McCAULEY: Be correct.

17 Q. Okay. Now, if you look at the nonMGP costs  
18 in your table there. Putting aside the change from  
19 2002 to 2003, would you agree that the variations  
20 from any one period to the next is less than 20  
21 percent?

22 WITNESS FERNANDES: And why would we remove the

1 2002 to 2003? Why would we not look at that?

2 Q. I'm saying putting aside the change from  
3 2002 to 2003, the other changes from the period to  
4 the next period is less than 20 percent?

5 WITNESS FERNANDES: Give or take, but we haven't  
6 represented 2005 costs which would be another --

7 Q. Thank you. I -- move on to my next  
8 question.

9 WITNESS FERNANDES: Okay.

10 Q. Just direct your attention to Page 6 of  
11 your surrebuttal testimony. Directing your  
12 attention to Lines 112 and 117. Do you see that in  
13 your testimony?

14 WITNESS McCAULEY: Yes.

15 Q. And you're talking about land acquisition  
16 costs.

17 WITNESS FERNANDES: We're talking about land  
18 acquisition costs -- remediation from these cites.

19 Q. Okay. Now, have you had the chance to  
20 review Mr. Crumrine's testimony, in particular, his  
21 surrebuttal testimony on the issue of land  
22 acquisition costs?

1 WITNESS McCAULEY: I briefly reviewed it.

2 Q. Okay. Would you agree that in his  
3 testimony, he stated that ComEd is going to accept  
4 staff's proposal with respect to land acquisition  
5 costs and -- do you recall that in his testimony?

6 WITNESS McCAULEY: I do.

7 Q. Okay. And are you in agreement with  
8 Mr. Crumrine that ComEd is accepting Staff's  
9 proposal to exclude land acquisition costs subject  
10 to certain language modifications from recovery  
11 under Rider ECR?

12 WITNESS McCAULEY: Well, Mr. Crumrine speaks on  
13 behalf of the company in that regard and this is  
14 the area he reports on.

15 So the answer is he's speaking for the  
16 company and that's -- Allan and myself are here.

17 Q. So you agree with that testimony of  
18 Mr. Crumrine on that issue then?

19 MR. McCAULEY: Correct.

20 MR. FEELEY: Just one second.

21 Thank you. That's all I have.

22 WITNESS FERNANDES: Thank you.

1 JUDGE DOLAN: Any redirect?

2 MR. BERNSTEIN: Can we take just a minute in  
3 place? We don't need to move.

4 JUDGE DOLAN: Sure.

5 REDIRECT EXAMINATION

6 BY

7 MR. BERNSTEIN:

8 Q. One of you -- I don't recall which --  
9 indicated in response to a question, I think it was  
10 from the City of Chicago regarding the application  
11 of the Clean Air Act to ComEd's sites. And I  
12 believe you indicated that, currently, there were  
13 no sites that were subject to Clean Air Act  
14 regulation.

15 When you gave that answer, were you  
16 considering the possibility that the regulation of  
17 asbestos may occur under the Clear Air Act?

18 WITNESS FERNANDES: You are correct.

19 I mean, we are actually under the Clean  
20 Air Act and not only for the asbestos abasement,  
21 but also the MGP site and the emissions that come  
22 from the remediation of the MGP cites.

1                   So we are definitely under the Clean Air  
2 Act.

3       MR. BERNSTEIN: That's all.

4       JUDGE DOLAN: Okay. Mr. Bernstein, did you say  
5 that on ComEd 44.0, there was three attachments?

6       MR. BERNSTEIN: I may have misspoken in that  
7 regard. Let me count them.

8                   We have a page sort of dangling at the  
9 end. It's not separately designated as a separate  
10 attachment and I'm not clear --

11       JUDGE DOLAN: Okay. My copy only had two. So  
12 that's why I was trying to clarify one way or the  
13 other.

14                   I had the --

15       MR. BERNSTEIN: There are two, and then there is  
16 this third page called Total Expenditures From  
17 Incremental and Environmental Costs Incurred by  
18 ComEd for Asbestos Abasement, and I don't know how  
19 that page was stapled as it was filed.

20       MR. FEELEY: I just have two.

21       JUDGE DOLAN: Okay. I don't have that one about  
22 the asbestos either, so...

1       MR. BERNSTEIN: I'm sorry. I'm informed that  
2       that third page was a work paper and it is not part  
3       of the exhibit as filed.

4       JUDGE DOLAN: Okay.

5       MR. BERNSTEIN: So it is two. I misspoke.

6       JUDGE DOLAN: Okay. Then at this time, you want  
7       to introduce these exhibits into the record?

8       MR. BERNSTEIN: Yes, just the two attachments.

9       JUDGE DOLAN: Okay.

10       MR. BERNSTEIN: We would renew our motion for  
11       admission into evidence of the two exhibits, ComEd  
12       Exhibit 28 and attachments and ComEd Exhibit 44 and  
13       attachments.

14       JUDGE DOLAN: Any objections?

15       MR. POWELL: No.

16       JUDGE DOLAN: Okay. Then ComEd Exhibit 28.0  
17       along with Attachments 28-A, 28-B and 28-C will be  
18       admitted into the record, and ComEd Exhibit 44.0  
19       along with Attachments 44-1 and 44-2 will be  
20       admitted into record.

21                   Thank you.

22

1 (Whereupon, ComEd  
2 Exhibit Nos. 28 and 44 were  
3 admitted into evidence as  
4 of this date.)

5 MR. TOWNSEND: Good afternoon, your Honor --  
6 good afternoon, your Honors. Chris Townsend  
7 appearing on behalf of the Coalition of Energy  
8 Suppliers.

9 Just as a matter of housekeeping, we'd  
10 like to introduce and move into the record the  
11 testimony on behalf of the Coalition of Energy  
12 Suppliers and affidavits that we have hard copies  
13 of here.

14 What we will do, consistent with the  
15 procedures that Staff outlined this morning, we  
16 will file via eDocket the affidavits as additional  
17 exhibits on behalf of the Coalition of Energy  
18 Suppliers.

19 Would you like me to read into the  
20 record the description of the various exhibits,  
21 your Honor?

22 JUDGE DOLAN: Yes, please.

1       MR. TOWNSEND:   Exhibit No. 1.0 is the direct  
2   testimony of Phillip R. O'Connor, Ph.D., with  
3   Attachments 1.1 and 1.2.

4               Exhibit 2.0 is the direct testimony of  
5   John Clark and Jennifer Whit (phonetic) with  
6   Attachment 2.1.

7               Exhibit 3.0, revised, is the direct  
8   testimony of John L. Domagalski,  
9   D-o-m-a-g-a-l-s-k-i, with Attachment 3.1.

10              Exhibit 4.0 is the direct testimony of  
11   Mary Meffe, M-e-f-f-e, with Attachments 4.1 through  
12   4.4.

13              Exhibit 5.0 is the rebuttal testimony of  
14   Phillip R. O'Connor and John L. Domagalski.

15              Exhibit 6.0 is the rebuttal testimony of  
16   John Clark and Jennifer Whit.

17              Exhibit 7.0, revised, is the rebuttal  
18   testimony of Mary Meffe.

19              We also, as I mentioned, have affidavits  
20   of the witnesses here.

21              CES Exhibit 8 will be the affidavit of  
22   Phillip O'Connor -- I'm sorry, Phillip R. O'Connor.



1                   Exhibit 9 is the affidavit of John  
2 Domagalski.

3                   Exhibit 10 is the affidavit of Jennifer  
4 Whit.

5                   Exhibit 11 is the affidavit of John  
6 Clark, and Exhibit 12 is the affidavit of  
7 Mary Meffe.

8                   And with that, I move for the  
9 introduction of the aforementioned exhibits.

10       MS. POLEK: ComEd has no objection.

11       JUDGE DOLAN: Okay. All right. Then with that,  
12 we'll just make sure I have it right before you  
13 walk away.

14                   We have CES Exhibit 1.0, along with  
15 Attachments 1.1 and 1.2, which will be admitted  
16 into the record.

17                   CES Exhibit 2.0 along with  
18 Attachment 2.1, which will be admitted into the  
19 record.

20                   CES Exhibit 3.0 along with the  
21 Attachment 3.1 which will be admitted into the  
22 record.

1                   CES Exhibit 4.0, along with attachments  
2 4.1 through 4.4, which will be admitted into the  
3 record.

4                   CES Exhibit 5.0, CEO -- CES Exhibit 6.0,  
5 which will be admitted into the record.

6                   CES Exhibit 7.0, revised, which will be  
7 admitted into the record, and then CES Exhibit 8.0  
8 which will be admitted into the record.

9                   CES 9.0 which will be admitted into  
10 record.

11                  CES 10.0, which will be admitted into  
12 the record.

13                  CES 11.0, which will be admitted into  
14 the record, and CES 12.0, which will be admitted  
15 into the record.

16       MR. TOWNSEND: That's correct, your Honor.

17       JUDGE DOLAN: Thank you.

18       MR. TOWNSEND: Would you like hard copies of the  
19 affidavits?

20       JUDGE DOLAN: It's not necessary.

21       MR. TOWNSEND: They will be filed this afternoon  
22 then on eDocket.

1 (Whereupon, CES  
2 Exhibit Nos. 1 - 12 were  
3 admitted into evidence as  
4 of this date.)  
5 JUDGE DOLAN: Thank you.  
6 MR. TOWNSEND: Thank you.  
7 JUDGE DOLAN: All right.  
8 Mr. Rooney, are you ready to proceed  
9 then?  
10 MR. ROONEY: Thank you, your Honor. John Rooney  
11 on behalf of Commonwealth Edison Company, and  
12 for -- per the procedure that was identified by the  
13 administrative law judges on Friday, Mr. Alongi and  
14 Mr. McInerney are on the stand and available for  
15 cross on the issue that was remaining from Friday.  
16 JUDGE DOLAN: Okay. Thank you.  
17 I guess I'll swear them in again just to  
18 make sure.  
19 Gentlemen, would you please state your  
20 names for the record.  
21 MR. LAWRENCE ALONGI: Lawrence S. Alongi,  
22 A-l-o-n-g-i.

1 MR. TIMOTHY McINERNEY: Timothy F. McInerney.

2 JUDGE DOLAN: All right. Please raise your  
3 right hands.

4 (Witness sworn.)

5 JUDGE DOLAN: Thank you.

6 Proceed.

7 LAWRENCE ALONGI and TIMOTHY McINERNEY,  
8 called as a witness herein, having been first duly  
9 sworn, was examined and testified as follows:

10 CROSS-EXAMINATION

11 BY

12 MR. BALOUGH:

13 Q. Thank you.

14 Again, my name is Richard Balough and I  
15 represent the CTA. And I would like to hand you --  
16 I believe it's CTA Cross Exhibit 2 for  
17 identification.

18 (Whereupon, CTA Cross  
19 Exhibit No. 2 was  
20 marked for identification  
21 as of this date.)

22 MR. BALOUGH: Your Honor, may I approach the

1 witness?

2 JUDGE DOLAN: Yes.

3 BY MR. BALOUGH:

4 Q. Mr. Alongi, do you have there with you what  
5 has been marked as CTA Cross Exhibit No. 2 for  
6 identification?

7 WITNESS ALONGI: Yes, I do.

8 Q. And, Mr. Alongi, pursuant to the discussion  
9 we had last Friday, CTA sent out data requests to  
10 Commonwealth Edison. Were you involved in  
11 responding to that data request?

12 WITNESS ALONGI: Yes, I was. And we received it  
13 Monday and responded last night.

14 Q. And what is in front of you that has been  
15 marked as CTA Cross Exhibit No. 2, is that the  
16 response to the CTA data request that was sent to  
17 you on Monday?

18 WITNESS ALONGI: Yes, it looks like it.

19 Q. And was this data request prepared either  
20 by you or under your supervision?

21 WITNESS ALONGI: Yes.

22 MR. BALOUGH: Your Honor, at this point, I would

1 offer CTA Cross Exhibit 2.

2 MR. ROONEY: Your Honor, we'll object to that.

3 As identified in our general objections  
4 and specific objections, we believe that the  
5 questions asked are -- and I would note for the  
6 record that we did provide answers, even though we  
7 found that these questions were objectionable.

8 In particular, questions regarding the  
9 contract and its applicability to this rate  
10 proceeding are irrelevant for the Commission's  
11 consideration. The -- as we discussed and it was  
12 identified in the CTA's attached exhibit, which I  
13 think it's in Exhibit 3, the provisions of the  
14 contract explicitly discuss the fact that -- that  
15 this agreement is subject to approval by the  
16 Illinois Commerce Commission and shall be subject  
17 to modification by proceedings before such  
18 Commission to the same extent and upon the same  
19 grounds as any filed rate of general applicability.

20 The terms and conditions of the contract  
21 which serve as the basis for the data requests that  
22 were received by the CTA on Monday morning all deal

1 with proposed changes to the contract. That's  
2 really not the subject of this proceeding.

3 The subject of this proceeding are the  
4 tariffs under which the Company will be providing  
5 service to customers including the CTA. And that  
6 whatever contract issues there may be, they're not  
7 relevant to the Commission.

8 The Commission's approving the rates.  
9 And as the contract itself reflects, is that the  
10 Commission can change the rates pursuant to a  
11 general rate case.

12 So in the end, we don't believe that  
13 these are relevant, and the answers to these data  
14 requests, all of which refer to contract and the  
15 contract changes, are outside the scope of this  
16 proceeding. And, accordingly, this exhibit should  
17 not be admitted.

18 MR. ROBERTSON: Your Honor, just one thing.

19 I have no position with regard to the  
20 conflict between the Company and the CTA on these  
21 contract issues which I'm not familiar with, but  
22 it's my understanding that this document contains

1 other tariff language and redline changes of  
2 tariffs which have not yet been presented in this  
3 case as part of the Company's original filing.

4           And if the exhibit is limit -- is  
5 offered for the limited purpose of referring only  
6 to and for use as an exhibit by the CTA in relation  
7 to their contract issue and for no other issue,  
8 then I don't have an objection.

9           I haven't seen it. I haven't had the  
10 chance to look at it. And if it's going to be  
11 offered for more than that, then I'd ask you to  
12 reserve ruling so we can look through the exhibit  
13 and be familiar with what's in there.

14       MR. BALOUGH: Your Honors, if I may.

15       JUDGE DOLAN: Go ahead, Mr. Balough.

16       MR. BALOUGH: Your Honor, the entire reason that  
17 we're here discussing this contract issue is that  
18 these very witnesses stated in their testimony that  
19 there were going to be changes made in the contract  
20 and the contract language was going to change.

21           I think we're entitled and the  
22 Commission, certainly, the Commissioners are



1 entitled to know what contract changes they  
2 purportedly are making when they issue a final  
3 order in this docket.

4           We certainly aren't conceding that this  
5 Commission has the authority to change any contract  
6 language; but as ComEd has presented the case, when  
7 these five Commissioners ultimately vote, it  
8 appears to be ComEd's position that these contract  
9 changes will be made automatically without any  
10 negotiation.

11           I think they're entitled to see it. I  
12 think we're entitled to see it. I think we're  
13 entitled to offer it into evidence.

14       MR. ROONEY: In reality, your Honor -- your  
15 Honors, the changes that will be made to the  
16 contract will be changes that have to conform to  
17 the rates that the Commission will adopt in its  
18 final order. And so from that standpoint, the  
19 contract language is irrelevant to this proceeding.

20           What's relevant is the fact that  
21 whatever rate changes are approved by the  
22 Commission will subsequently have to be reflected

1 in a contract just as they have been for years.

2 JUDGE DOLAN: But didn't you testify -- or not  
3 testify, but state the other day that the contracts  
4 between the CTA and ComEd are just like the rider  
5 or are filed just as if they are riders?

6 MR. ROONEY: The Commission treats the contracts  
7 as tariffs; and to the extent that they deal with  
8 rates, your Honor, they're compliance filings and  
9 they will -- they comply with the rates that the  
10 Commission ultimately approves in this case.

11 JUDGE DOLAN: And your two witnesses did testify  
12 the other day that -- or there is testimony that  
13 the contract will have to be modified based on  
14 ComEd's proposals.

15 MR. ROONEY: Absolutely.

16 JUDGE DOLAN: So, I mean, it's difficult for us  
17 to review these real quickly and make a  
18 determination one way or the other; but at the same  
19 time, so let us --

20 MR. ROONEY: I'm sorry.

21 MR. GOWER: I didn't hear what you said, Judge.

22 JUDGE DOLAN: No, I'm...

1                   Let us go off the record so we can  
2 confer concerning this thing.

3       MR. GOWER: Your Honor, before you issue that  
4 ruling, I'd just put -- there are multiple  
5 references in here to efforts by  
6 Commonwealth Edison to preserve aspects of this  
7 contract.

8                   And, for example, in Mr. Alongi and  
9 Mr. McInerney's rebuttal testimony on Page 42 of  
10 Exhibit 24.0, they testified, However, providing  
11 partial requirements -- service under rate BES-H  
12 rather than under CPP-H charges provisions of rate  
13 BES-RR has the unintended consequence of  
14 effectively terminating the other provisions of the  
15 railroad customer's contract with ComEd, i.e., the  
16 CTA agreement or the NIRCRC agreement, which is the  
17 reference to the Metra agreement.

18                   Consequently, if the Commission  
19 approves, ComEd proposes to include appropriate  
20 revisions to these three tariffs. In order to  
21 provide partial requirement service to a railroad  
22 customers under the provisions of CPP-H charge

1 provisions of rate BES-RR rather than rate BES-H  
2 and thereby maintain the other provisions of a  
3 railroad customer's contract with ComEd in the  
4 event a railroad customer elects a partial  
5 requirement service.

6                   And I don't think it's out of line in  
7 this proceeding when you have the proponent saying  
8 that they're going to keep parts of the contract  
9 and not keep parts of a contract, to ask the  
10 question, What are you keeping and what are you not  
11 keeping?

12                   And there are provisions in this  
13 contract that govern other aspects of the parties'  
14 relationship and we're entitled to know whether --  
15 whether and to what extent those provisions are  
16 being affected by the filing here and when they  
17 propose to change, so --

18       MR. ROONEY: I think --

19       MR. GOWER: There's testimony on the record  
20 they're going to keep some, they're not going to  
21 keep some. I think we're entitled to know what  
22 they're keeping and what they're not.

1 JUDGE DOLAN: All right. We're going to go off  
2 the record.

3 (Recess taken.)

4 MR. ROONEY: Your Honors, as I informed counsel  
5 and yourselves when we were off the record, ComEd,  
6 for the sake of expediting things here, is going to  
7 withdraw their objection to what has been marked as  
8 CTA Exhibit 1 -- or 2, I'm sorry, Cross Exhibit 2.

9 JUDGE DOLAN: All right then.

10 MR. ROBERTSON: It's still doesn't address my  
11 concern, your Honor, it that there appears to be in  
12 this exhibit modifications to ComEd's tariffs which  
13 are unrelated to the CTA issue and which purport to  
14 show, for example, Mr. Crumrine's settlement  
15 proposal -- or not settlement, his compromise  
16 proposal in his surrebuttal which didn't have any  
17 rates associated with it. And this document now,  
18 if admitted into evidence without limitation, would  
19 be a document that demonstrated those rates, as  
20 near as I can tell.

21 And we have not had a chance to look at  
22 them or review them in any fashion. If the CTA is

1 putting this in for the limited purpose of  
2 addressing the CTA contract issue and only the  
3 portions of that exhibit that deal with that issue  
4 and not for any other general purpose, then we  
5 wouldn't have an objection.

6 But if it's being put into record  
7 without limitation, then we would object because we  
8 haven't had the time to review any of the material  
9 that's in there that would relate to the issues  
10 that we raised in the case.

11 JUDGE DOLAN: Well, I think as long as you  
12 expand your argument to include Metra in that, but  
13 I think he's putting it in for the limited purpose  
14 of showing the modifications to both the Metra's  
15 and CTA's contract.

16 MR. ROBERTSON: Right.

17 JUDGE DOLAN: And that's the purpose that we're  
18 letting it -- admitting it into the record.

19 MR. ROBERTSON: Thank you very much.

20 MR. BALOUGH: Your Honor, so the record is  
21 clear, what I put in is the CTA's. I'm sure Metra  
22 will be putting in their response -- they're

1    separate response.

2           JUDGE DOLAN:  Oh, it's a separate response?

3           MR. BALOUGH:  Yes.

4           JUDGE DOLAN:  Okay.  All right.  Then that's

5   fine.

6           MR. BALOUGH:  I don't purport --

7           JUDGE DOLAN:  The CTA's limited purpose to show

8   modifications of the contract, it will be admitted

9   into the record.

10                               (Whereupon, CTA Cross

11                               Exhibit No. 2 was

12                               admitted into evidence as

13                               of this date.)

14  BY MR. BALOUGH:

15       Q.    Okay.  Mr. Alongi, if you could turn to

16  CTA Cross Exhibit No. 2, and to Page CEC-18552.

17       WITNESS ALONGI:  18552?

18       Q.    Right.

19       MR. ROONEY:  Richard, do you have an extra copy

20  of that document?  Because mine doesn't have a

21  Bates numbering on it.

22                       Thank you.

1 WITNESS ALONGI: Can I ask a question?

2 Is this part of the exhibit that has

3 been put into the record or not?

4 MR. BALOUGH: Yes.

5 WITNESS ALONGI: I'll need the contract

6 provision. This is a tariff revision.

7 MR. ROONEY: What page?

8 MR. BALOUGH: 18552.

9 MR. ROONEY: We're on that page.

10 WITNESS ALONGI: 18552 is where I'm at.

11 BY MR. BALOUGH:

12 Q. Okay. I just wanted to ask you under which

13 class would CTA fall?

14 WITNESS ALONGI: I believe most of their

15 locations would be in the Very Large Load 1

16 delivery class.

17 MR. BALOUGH: That's all the questions I have,

18 your Honor.

19 JUDGE DOLAN: Thank you, Mr. Balough.

20 Are we going to do -- okay.

21 MR. GOWER: You want -- following.

22 MR. ROONEY: I'm waiting for you.



1       MR. GOWER: Well, I did this a little  
2 differently. I'm -- Mr. Alongi, I think we've  
3 met -- I know we've met the other day. I'm  
4 Ed Gower from Hinshaw. I represent Metra, and all  
5 I want to do is put your responses to the data  
6 requests into the record and we will be done.

7               I did not lump them all together,  
8 though. I broke them out by exhibit and  
9 attachment, so...

10                               (Whereupon, there was a  
11                               change of reporters.)

12       JUDGE DOLAN: Back on the record.

13               CROSS EXAMINATION

14               BY

15               MR. GOWER:

16       **Q.** Mr. Alongi, showing you what has been  
17 previously marked as Metra Cross Exhibit No. 1,  
18 what is that document?

19       **A.** This is ComEd's response to Metra's data  
20 request 1.01, along with several attachments.

21       MR. GOWER: Your Honor, since I premarked this  
22 exhibit -- I actually contemplated using seven

1 exhibits. Mr. Rooney and I agreed that we would  
2 send you a copy of what was electronically  
3 submitted and mark that as Metra Cross Exhibit 1  
4 rather than having a series of extraneous markings  
5 on this document. Is that acceptable to  
6 your Honors?

7 JUDGE DOLAN: Yes.

8 MR. GOWER: Okay.

9 BY MR. GOWER:

10 Q. Can you identify the first document in  
11 Metra Cross Exhibit No. 1?

12 A. Again, it's ComEd's response to Metra data  
13 request 1.01.

14 Q. Is that a document that you participated in  
15 developing and --

16 A. Yes.

17 Q. -- preparing? Did you supervise the  
18 preparation of this document?

19 A. Pardon me?

20 Q. Did you supervise the preparation of this  
21 document?

22 A. Yes.

1       **Q.**     Okay.   And can you tell me what the next  
2   document is which is identified as -- in the group  
3   as ComEd attachment 1.0?

4       **A.**     This would be changes to certain sections  
5   of Metra's contract with ComEd to conform into the  
6   Commission's order, if the Commission approved  
7   ComEd's initial August 31st, 2005 tariff proposal  
8   with BES-RR.

9       **Q.**     Okay.   And what is the next attachment  
10  which is identified as ComEd attachment 2.0 in the  
11  top right corner?

12      **A.**     These are revisions of Metra's contract  
13  with ComEd to conform it to the Commission's order,  
14  if the Commission approved certain modifications  
15  ComEd offered in its rebuttal testimony.

16      **Q.**     And if you'd look at the next group of  
17  documents which appear to be a group of tariff  
18  sheets, what are those?

19      **A.**     These are tariff revisions that ComEd would  
20  file in compliance with the Commission's order if  
21  the Commission approves certain proposals ComEd  
22  made in its rebuttal testimony.

1       **Q.**     Okay.   And, finally, what's the -- I  
2     shouldn't say finally.

3               The next group of documents which starts  
4     with the Bates number at the bottom CEC 0018592 and  
5     runs through CEC 0018631, what is that document?

6       **A.**     This is a set of tariff revisions that  
7     ComEd would file in compliance with the  
8     Commission's order if the Commission were to  
9     approve ComEd's alternative proposal from its  
10    surrebuttal testimony.

11       **Q.**     That's the alternative proposal Mr. Balough  
12    just asked you questions about?

13       **A.**     Yes.

14       **Q.**     Okay.   And if you'd look at the next  
15    document in the group, it is Bates numbered CEC  
16    0018565.   Can you tell me what that document is?

17       **A.**     I just want to clarify something.

18               I would have expected another set of  
19    Metra contract changes along with these tariff  
20    provisions.   So I'm not sure where they're at.

21               0018565 is ComEd's response to Metra  
22    data request 1.02.

1       **Q.**     You would have expected another set of  
2     tariff changes in addition to the two that were  
3     identified?

4       **A.**     There would have been -- or there should  
5     have been a set of changes to the Metra contract  
6     and conform it to the Commission's order if the  
7     Commission approved ComEd's surrebuttal proposal.

8       MR. GOWER:   If -- are you willing to stipulate  
9     putting that in as part of the submission that we  
10    received?

11      MR. ROONEY:   I think it's part of what we  
12    distributed.   So we would agree to that.

13

14   BY MR. GOWER:

15      **Q.**     Moving on then, what is the document that's  
16    Bates numbered CEC 001565 that's included i Metra  
17    Cross Exhibit 1?

18      **A.**     00 --

19      **Q.**     18565.

20      **A.**     The one page?   That's ComEd's response to  
21    Metra data request 1.02.

22      **Q.**     And the last document, that's part of Metra

1 Cross Exhibit 1, ComEd's response to Metra data  
2 request 1.03?

3       **A.**     Yes.

4       MR. GOWER: Your Honor, I move for the admission  
5 of Metra Cross Exhibit 1 into evidence for the  
6 limited purpose of identifying proposed changes to  
7 the Metra Commonwealth Edison contract if various  
8 Commonwealth Edison proposals or alternative  
9 proposals were adopted by the Commission.

10       JUDGE DOLAN: Any objection?

11       MR. ROONEY: No.

12       JUDGE DOLAN: For that limited purpose, Metra  
13 Cross Exhibit No. 1 will be admitted into evidence.  
14 (Whereupon, Metra Cross  
15 Exhibit No. 1 was  
16 admitted into evidence  
17 as of this date.)

18       MR. GOWER: Thank you. I have no further  
19 questions.

20       JUDGE DOLAN: Thank you.

21       MR. ROONEY: I do have some redirect,  
22 your Honor.

1 JUDGE DOLAN: Okay.

2 REDIRECT EXAMINATION

3 BY

4 MR. ROONEY:

5 Q. Mr. Alongi, between Friday's examination  
6 and the information that has now been admitted into  
7 evidence today, there have been issues raised  
8 concerning -- several issues raised concerning the  
9 agreements between Metra and ComEd and CTA and  
10 ComEd. Do you recall questions regarding that?

11 A. Yes.

12 Q. Okay. Just for the sake of sequencing  
13 here, I'd like to first direct your attention to  
14 CTA Cross Exhibit No. 2. And in that cross  
15 exhibit, I'd ask you to turn to Page CEC 0018485.  
16 It's Page 4 of the response. Do you have that in  
17 front of you?

18 A. Yes, I do.

19 Q. Now, there's a section in that page that's  
20 been bolded. Do you see that section?

21 A. Yes, I do.

22 Q. Can you explain the significance of why

1 that response was bolded when the company responded  
2 to this data request?

3 **A.** This is an excerpt of the applicability  
4 section from ComEd's rate BES-RR. And in the last  
5 sentence of the applicability section, it makes  
6 clear that this tariff constitutes an amendment to  
7 the NIRCRC agreement and the CTA agreement which  
8 are defined in that paragraph as basically being  
9 CTA and Metra.

10 **Q.** So would I be correct that this identified  
11 a change to the existing contracts that ComEd was  
12 proposing?

13 **MR. BALOUGH:** Objection, your Honor. That calls  
14 for a legal conclusion as to what constitutes a  
15 change to the contract.

16 **MR. ROONEY:** The language that has been provided  
17 here states, This tariff constitutes an amendment.  
18 And my question is -- goes to was that a -- let me  
19 strike it and I'll ask this question.

20 **BY MR. ROONEY:**

21 **Q.** Mr. Alongi, when was this tariff filed?

22 **A.** August 31st, 2005.



1       **Q.**     Okay.  And you were responsible for  
2     preparing the tariffs that were proposed in this  
3     proceeding?

4       **A.**     That's correct.

5       **Q.**     Okay.  And you have been engaged -- strike  
6     that.

7                     So would I be correct that, in your  
8     opinion, this provided notification to parties,  
9     specifically Metra and CTA, that this tariff  
10    language would serve to amend the existing  
11    agreements?

12      **A.**     Yes.

13      MR. BALOUGH:  Your Honor, I'm going to object.  
14    That's calling, one, for speculation and, two, it's  
15    beyond our examination.

16      MR. ROONEY:  If you recall, your Honors, and I  
17    can pull the transcripts out from Friday, there was  
18    a series of questions and a series of comments by  
19    Counsel about the fact that they haven't been given  
20    any notice or they just didn't know what, in fact,  
21    was being changed.

22                     And this directly responds to both the

1 questioning that took place, as well as the  
2 questions that are asked in this document here.

3 JUDGE DOLAN: You know, Counsel, I'm going to  
4 overrule the objection because it's based on his  
5 proposals.

6 BY MR. ROONEY:

7 Q. Do you need the question?

8 A. Yes.

9 MR. ROONEY: Could I ask that it be read back,  
10 your Honor.

11 (Record read as requested.)

12 THE WITNESS: Yes.

13 BY MR. ROONEY:

14 Q. Mr. Alongi, do you recall any other  
15 instances when ComEd has made tariff filings that  
16 effectively changed the agreements between ComEd  
17 and Metra or ComEd and CTA?

18 A. Yes. We changed prices in those contracts  
19 in past rate cases routinely.

20 Q. And take me through that process. A rate  
21 case takes place and there's proposed changes in  
22 rates; correct?

1       **A.**     Correct.

2       **Q.**     And then at some point, the Commission  
3 enters an order that adopts changes in rates;  
4 correct?

5       **A.**     Correct.

6       MR. BALOUGH: Your Honor, I think this is a tad  
7 bit leading. If we could have him ask the process  
8 and not have him lead him through the response.

9       MR. ROONEY: Well, let me do this instead.

10      BY MR. ROONEY:

11      **Q.**     Mr. Alongi, I've handed you a seven-page  
12 document that I'd like to entitle as Commonwealth  
13 Edison Company Redirect Exhibit No. 1.  
14 (Discussion off the record.) (Whereupon, ComEd  
15 Redirect  
16 Exhibit No. 5 was  
17 marked for identification  
18 as of this date.)

19      MR. ROONEY: I'm sorry. Redirect Exhibit 5.

20      BY MR. ROONEY:

21      **Q.**     Do you see that document, Mr. Alongi?

22      **A.**     Yes, I do.

1       **Q.**     Can you explain what these documents are?

2       **A.**     These are amendments to the electric  
3     service agreement between Commonwealth Edison  
4     Company and Chicago Transit Authority. Each is  
5     dated at the top. It shows a date filed and  
6     effective at the bottom.

7                 Generally, it looks like they're filed,  
8     issued pursuant to Illinois Commerce Commission  
9     orders in the lower left-hand side of the each  
10    page. And they amend or add to sections of the CTA  
11    contract.

12       **Q.**     And do you know whether or not these  
13    amendments were subject to negotiation before these  
14    amendments were filed with the Commission?

15       **A.**     They would be amendments filed pursuant to  
16    the Commission order, just as it shows.

17       **Q.**     So they would be implementing a rate case  
18    decision or some other Commission decision?

19       **A.**     That's correct.

20       **Q.**     Okay. Are there -- sticking with the CTA,  
21    are there any other types of -- strike that.

22                 Are you familiar with the CTA agreement

1 that was attached to CTA Exhibit 3.0?

2 For the record, I'm handing the witness  
3 a copy of that document.

4 A. Yes. Over the past few days, I've become  
5 very familiar.

6 Q. I bet you have.

7 Now, Mr. Alongi, does that document  
8 reflect the actual terms and conditions that are in  
9 place today under which the company's operating  
10 vis-a-vis its relationship with CTA?

11 A. I do know that there's a number of  
12 amendments and advices that, you know, have changed  
13 certain obsolete provisions that are in this  
14 particular document. But --

15 Q. So -- I'm sorry.

16 A. As we say, but by and large, this is the  
17 document that describes our relationship with the  
18 CTA, yes.

19 Q. Subject to the tariff filings or advices  
20 you just referenced?

21 A. Yes, and subject to Commission approval.

22 Q. What is -- just for the -- what is an

1 advice or an advice as you just called it?

2       **A.**     An advice is a document that's filed with  
3 the Commission that reflects changes to the  
4 provisions of the contract.

5       **Q.**     Would you have any idea how many advices  
6 have been filed with relationship to the CTA  
7 agreement?

8       **A.**     I have a stack of probably 200.

9       **Q.**     And for the sake of the record, I won't  
10 burden the record with the 200.

11               In addition to the documents that I've  
12 provided you in Commonwealth Edison Redirect  
13 Exhibit No. 5, are there other similar types of  
14 tariff filings that amend the CTA agreement, or are  
15 these the entire set of amendments that have been  
16 filed after rate cases?

17       **A.**     Oh, no, there are more.

18       **Q.**     Okay.

19 (Whereupon, ComEd Redirect  
20 Exhibit No. 6 was  
21 marked for identification  
22 as of this date.)

1 BY MR. ROONEY:

2 Q. Mr. Alongi, I've handed to you a nine-page  
3 document that I'll identify as Commonwealth Edison  
4 Redirect Exhibit No. 6. Have you had occasion to  
5 look through that document?

6 A. Yes.

7 Q. What are the pages -- what are these pages  
8 in this document?

9 A. They're amendments to the electric service  
10 agreement between Commonwealth Edison Company and  
11 Northeast Illinois Regional Commuter Railroad  
12 Corporation, which we know as Metra.

13 Q. And are these amendments that are made  
14 subsequent to the entry of a Commission order?

15 A. Yes. Each one has a reference to a  
16 Commission order in the lower left-hand corner.

17 Q. And just to save time, if I asked you the  
18 same -- well, maybe I won't go that far.

19 These are similar to the same documents  
20 that are reflected in ComEd Redirect Exhibit 5  
21 involving the CTA, correct, in terms of they're  
22 similar in nature?

1       **A.**     Yes.

2       **Q.**     And would these nine pages reflect the  
3 universe of tariff changes that have been made that  
4 would amend the Metra agreement?

5       **A.**     No.

6       **Q.**     Would there -- you testified earlier that  
7 there were advices filed with the Commission which  
8 are different from these tariff pages for CTA;  
9 correct?

10      **A.**     That's correct.

11      **Q.**     Are there advices that have also been filed  
12 with regard to the CTA agreements?

13      **A.**     If you mean Metra, yes.

14      **Q.**     I'm sorry. Metra. Thank you. Long day.  
15                Okay. And so then -- strike that.

16                Mr. Alongi, in your -- turning back to  
17 what has been identified as CTA Cross Exhibit No.  
18 2, do you have that nearby?

19      **A.**     Yes.

20      **Q.**     I'm going to ask you to turn to Page 2  
21 which is Bates identified as CEC 0018483.

22      **A.**     Yes.



1       **Q.**     And in Paragraph 5, that's identified as  
2     No. 5, there is a statement in there that -- well,  
3     I'll read the sentence.

4                 Accordingly, ComEd's response  
5     constitutes Mr. Alongi's good faith effort to, one,  
6     identify sections of the contract that would be  
7     affected by a Commission order adopting ComEd's  
8     proposals, and, two, propose contract  
9     clarifications that would at a minimum conform the  
10    contract to the Commission's order if the  
11    Commission adopted ComEd's railroad rate design  
12    proposal.   Do you see that?

13       **A.**     Yes, I do.

14       **Q.**     Okay.   Does this -- you testified earlier,  
15    I think, in response to a question from Mr. Gower  
16    that the company has proposed several different  
17    changes -- strike that, several different  
18    alternatives with regard to establishing rates for  
19    the railroad class; correct?

20       **A.**     Correct.   In response to CTA direct  
21    testimony and rebuttal testimony in the case, we've  
22    offered to make changes to the tariffs that we

1 filed in compliance with the Commission's final  
2 order in this case.

3 Q. And so then going back to the sentence I  
4 read in Paragraph 5 on Page 2 of ComEd's data  
5 response to CTA 2.01, am I to understand then that  
6 when you talk about identifying sections of the  
7 contract that would be affected by a Commission  
8 order, what you've done here is propose three  
9 alternatives depending on what the Commission may  
10 ultimately do?

11 MR. GOWER: Is that a question or a statement?

12 MR. ROONEY: That was a question.

13 MR. GOWER: I object as leading.

14 MR. ROONEY: Let me strike it.

15 THE WITNESS: The --

16 MR. ROONEY: There is no question pending,  
17 Mr. Alongi; although, I appreciate your enthusiasm.

18 BY MR. ROONEY:

19 Q. Mr. Alongi, in terms of that same sentence,  
20 what do you mean with regard to -- or can you  
21 amplify further what you mean with regard to the  
22 clause that comes after No. 1 in that sentence?

1       **A.**     Identify sections of the contract that  
2     would be affected by a Commission order adopting  
3     ComEd's proposals.

4       **Q.**     Right.

5       **A.**     What we did in this data request response  
6     was to do just that; identify -- we not only  
7     identified the sections that we thought needed to  
8     be changed, we went ahead and identified language  
9     changes to reflect what we think we'd have to  
10    change to implement the Commission's order in three  
11    different scenarios.

12               One was our initial filing from August  
13    31st, 2005. The second was a proposal that we made  
14    in our rebuttal testimony with respect to partial  
15    requirement service. And the third was a proposal  
16    that we made in surrebuttal testimony to provide  
17    one-line standard service to each of the railroad  
18    tracks and power substations and bill each of those  
19    accounts as a separate account similar to billing  
20    other retail customers.

21               And that's what those changes were  
22    intended to reflect.

1 MR. ROONEY: With that, your Honor, I'd move for  
2 the admission of ComEd Redirect Exhibits No. 5 and  
3 No. 6.

4 JUDGE DOLAN: Any objection?

5 MR. BALOUGH: No objection.

6 JUDGE DOLAN: ComEd Redirect Exhibit No. 5 and  
7 ComEd Redirect Exhibit No. 6 will be admitted into  
8 the record.

9 (Whereupon, ComEd Redirect  
10 Exhibit Nos. 5 and 6 were  
11 admitted into evidence  
12 as of this date.)

13 JUDGE DOLAN: Any recross concerning --

14 MR. BALOUGH: Yes.

15 RECROSS EXAMINATION

16 BY

17 MR. BALOUGH:

18 Q. Mr. Alongi, I want to talk for a moment  
19 about the advices. Am I correct that the advices  
20 would include, for example, if a CTA substation  
21 were no longer in existence, that an advice would  
22 be filed with the Commission saying this substation

1 is being deleted from the contract?

2 A. Correct.

3 Q. And, for example, an advice would be when  
4 some of the -- there used to be what were called  
5 joint substations. Are you familiar with that  
6 term?

7 A. Yes.

8 Q. And when some of those joint substations --  
9 when they were changed to regular substations, that  
10 would be an advice that was filed with the  
11 Commission; is that correct?

12 A. That's correct.

13 Q. So many of these advices were filed based  
14 upon discussions between the CTA and ComEd before  
15 they were filed; is that correct?

16 A. I've never been involved in those type of  
17 discussions. I only know what I see in the file.

18 Q. So, for example, if the CTA was taking a  
19 substation off line and no longer being in service,  
20 your sole job was to file the advice, you didn't  
21 have any idea as to who may have initiated that  
22 proposal?

1       **A.**     Quite frankly, I've never filed one of  
2     those advices, but -- and that would not be my sole  
3     task.

4       **Q.**     Okay.  So on all these advices that were  
5     filed, you're relying on what someone else has told  
6     you about that?

7       **A.**     We have a record of all those advices in  
8     our department file.

9       **Q.**     Okay.  So you look in your -- you looked in  
10    the official records of ComEd and you looked up  
11    what the advices were?

12      **A.**     Yes.  I reviewed them last night.

13      **Q.**     And there was also -- and I believe it's  
14    CTA Exhibit 3.03 which is the 1998 agreement, the  
15    contract.  Are you familiar with that?

16      **A.**     Yes.  I've, again, become familiar with  
17    that, yes.

18      **Q.**     And was the 1998 agreement submitted to the  
19    Commission for approval?

20      **A.**     No.  It was a provision that -- at the time  
21    before ComEd was an integrated distribution company  
22    and after the time of the customer choice law being

1 enacted in December 1997, that provision in the  
2 act -- and I think it's 16-116B -- allowed ComEd to  
3 enter into a contract agreement with a customer  
4 without specific Commission approval. And that's  
5 how that amendment came about.

6 Q. And that amendment was negotiated between  
7 ComEd and the CTA; is that correct?

8 A. That's correct.

9 Q. Are you aware of other agreements that were  
10 negotiated between ComEd and the CTA that have not  
11 been filed with the Commission?

12 A. No.

13 MR. BALOUGH: That's all the questions I have.

14 JUDGE DOLAN: Thank you.

15 RECROSS EXAMINATION

16 BY

17 MR. GOWER:

18 Q. Mr. Alongi, in the interest of time, I'm  
19 just going to ask you to flip through the various  
20 one page or two-page tariff changes that you've  
21 supplied today as --

22 MR. GOWER: What exhibit was this, by the way?

1       MR. ROONEY:   This was ComEd Redirect Exhibit  
2   No. 6.

3       MR. GOWER:   Thank you.

4   BY MR. GOWER:

5       Q.   ComEd Redirect Exhibit No. 6, there are  
6   several one or two-page amendments to the existing  
7   tariffs.   Do you have those in front of you?

8       A.   Yes, I do.

9       Q.   Would you agree that, in every instance,  
10   all that was being changed was the rate for the  
11   supply of electricity in one form or another?

12      A.   Yes.

13      Q.   Would you agree that in every instance, the  
14   document that -- the tariff change identified the  
15   specific section of the Commonwealth Edison Metra  
16   contract that was being affected?

17      A.   The section numbers are listed, yes.

18      Q.   And would you agree that the first time  
19   that you supplied that information to Metra in this  
20   case was at 10:51 last night?

21      A.   I don't know what the time stamp was, but  
22   it was late.



1 MR. GOWER: That's all the questions I have.

2 MR. ROONEY: A couple more, your Honor.

3 Mr. Gower always piques my interest.

4 FURTHER REDIRECT EXAMINATION

5 BY

6 MR. ROONEY:

7 Q. Mr. Alongi, do you know whether -- let's  
8 find -- let me find one here.

9 Near the second from the last page,  
10 Mr. Alongi, there's a -- just to identify, down at  
11 the bottom left, it says, Filed with the Illinois  
12 Commerce Commission on January 10th, 1995, issued  
13 pursuant to an order of the Illinois Commerce  
14 Commission entered January 9th, 1995, in Docket  
15 94-0065. Do you have that page in front of you?

16 A. Yes, I do.

17 Q. Was Docket 94-0065 ComEd's last bundled  
18 rate case?

19 A. Yes, it was.

20 Q. Were you involved in that case in any  
21 fashion?

22 A. Yes.

1       **Q.**     In what capacity?

2       **A.**     At the time, I was senior system rate  
3 administrator. And I was responsible for ensuring  
4 that tariffs were filed in compliance with the  
5 '83 Illinois Administrative Code.

6       **Q.**     Do you know whether the -- would you have  
7 been involved to one degree or another -- strike  
8 that.

9                   Do you know whether in that rate case,  
10 ComEd identified specific contract language that  
11 may be subject to change in accordance with a rate  
12 proposal that was made in that docket?

13       **A.**     Well, I can tell you this.

14       MR. GOWER: Excuse me. I'd rather have an  
15 answer to the question as opposed to "I can tell  
16 you this."

17       MR. ROONEY: Let him answer the question.

18       MR. GOWER: If you're answering the question,  
19 that's fine. If you're going to veer off, I was  
20 objecting to that.

21       THE WITNESS: I think I'm going to answer it.  
22 I'm going to try.

1                   This was a sheet that was filed  
2   January 10th, 1995, in compliance with the  
3   Commission's order.  There was a similar sheet  
4   filed 11 months earlier with the Commission at the  
5   outset of the rate case, and we did the same thing  
6   in this case.

7                   We filed a sheet very much like this  
8   canceling certain pricing sections of both CTA and  
9   Metra contracts -- or -- and I think even the  
10  Chicago Streetlight contract and Chicago Park  
11  District.

12       MR. ROONEY:  Thank you.  No further questions.

13       JUDGE DOLAN:  Thank you.  Mr. Rooney, we still  
14  have to admit those.

15       MR. ROONEY:  Yes, indeed we do.  There's one  
16  change.  And according -- I don't know if Mr.  
17  Bernet is here, but there was an agreement --  
18  excuse me.

19                   There was an agreement the other day, as  
20  I understand it, with regard to certain testimony  
21  involving Mr. Hill as well as Mr. Effron and Staff  
22  Witness Griffin.

1 MR. BERNET: I thought it was Mr. McGarry.

2 MR. ROONEY: Oh, McGarry. Okay. With regard to  
3 revenues associated with addition of customers.

4 And what we need to do is submit in  
5 Exhibit 41.9, which is Mr. Alongi's and Crumrine's  
6 (sic) surrebuttal testimony, a corrected version of  
7 that exhibit that will reflect what was agreed to  
8 previously by the parties.

9 And so with that, I'm prepared here to  
10 circulate it. And if people want an opportunity to  
11 look at that particular exhibit before you rule on  
12 that, that's fine; but I'd ask then for the  
13 admission in the meantime of the direct testimony  
14 of this panel, Exhibit 10.0, with Exhibits 10.1  
15 through 10.30 attached; the rebuttal testimony of  
16 this panel which is Exhibit 24, along with attached  
17 Exhibits 21.1 through 24.10; and the surrebuttal  
18 testimony of this panel which is identified as  
19 Exhibit 41.0 which has both a public and a  
20 confidential version of the document attached. And  
21 Exhibits 41.1 through 41.9 with 41.9 being a  
22 corrected version, that, subject to the agreement

1 of the parties, we would file separately on  
2 E-docket.

3 JUDGE DOLAN: Okay. I think the only  
4 correction -- I think when you said ComEd Exhibits,  
5 I think -- for the rebuttal, you said 21 instead of  
6 24.

7 MR. ROONEY: I'm sorry. The written testimony  
8 was 24.0 and the attachments were 24.1 through  
9 24.10.

10 JUDGE DOLAN: Okay. With that, any objection?

11 MR. GOWER: I missed what agreement -- what you  
12 changed pursuant to agreement of the parties in the  
13 exhibit.

14 MR. ROONEY: The good news is, Mr. Gower, I  
15 don't think is it has anything of your concern, but  
16 I will give you the document. What's a little more  
17 paper at this point?

18 And, again, if you want to reserve  
19 ruling until you hear back from some of the other  
20 parties, that's fine.

21 MR. GOWER: I did have another question for  
22 Mr. Alongi when we get around to it.

1 JUDGE DOLAN: Okay.

2 FURTHER RECROSS EXAMINATION

3 BY

4 MR. GOWER:

5 Q. Did I misunderstand your testimony or did  
6 you testify that you filed something very similar  
7 to this one page document in which you described  
8 all of the price changes to all outstanding  
9 provisions of the Metra contract?

10 MR. ROONEY: And by that, just for  
11 clarification, you're referencing the eighth page  
12 to the ComEd Redirect Exhibit 6.0 which --

13 MR. GOWER: I'm referencing the second to last  
14 page of ComEd Cross Exhibit --

15 MR. ROONEY: Redirect.

16 MR. GOWER: -- Redirect Exhibit 6.

17 THE WITNESS: In ComEd's Exhibit 10.2, I believe  
18 it is, there's an amendment that's shown filed with  
19 the Illinois Commerce Commission August 31st, 2005,  
20 which would -- the amendment says, The  
21 aforementioned provisions of such Section 7.01.  
22 7.02, 7.03 are not affected for service provided

1 after January 1st, 2007. There's a similar sheet  
2 for the CTA contract using the same provision.

3 BY MR. GOWER:

4 Q. But that's dramatically different from the  
5 changes that you identified that will need to be  
6 made to the Metra Commonwealth Edison contract if  
7 your proposal in this proceeding is adopted;  
8 correct?

9 A. Taken in conjunction with our rate BES-RR,  
10 the fact that BES-RR defines how pricing will be  
11 implemented in the -- in essence, cancellation of  
12 these provisions, I think taken together, I don't  
13 see how that's a surprise to anyone.

14 MR. GOWER: Thank you very much.

15 JUDGE DOLAN: Mr. Feeley?

16 MR. FEELEY: Yeah. Just one point of  
17 clarification.

18 Mr. Rooney indicated that Mr. Alongi and  
19 McInerney's Exhibit 41.9 Corrected related to an  
20 agreement between ComEd, some others, and Staff.  
21 And I don't think that Staff was any part of that.

22 MR. ROONEY: I may have misspoke. I think it

1 was A&G Witness Effron. It's A&G Witness Effron,  
2 John.

3 MR. FEELEY: I just wanted to that  
4 clarification.

5 JUDGE DOLAN: All right. Subject to that, does  
6 anyone have any objections to the panel testimony,  
7 along with the exhibits, being admitted into  
8 evidence?

9 MR. GOWER: No objection here, your Honor.

10 JUDGE DOLAN: Thank you. ComEd Exhibit 10.0,  
11 along with ComEd Exhibit 10.01 and through 10.30,  
12 will be admitted into the record.

13 And then ComEd Exhibit 24.0, along with  
14 ComEd Exhibit 24.01 through 24.10, will be admitted  
15 into the record. And then ComEd Exhibit 41 public  
16 and ComEd Exhibit 41 confidential, along with ComEd  
17 Exhibits 41.01 through 48 -- 41.08 will be admitted  
18 into the record.

19 And then ComEd Exhibit 41.09 Corrected  
20 will also be admitted into record.

21 MR. KAMINSKI: Your Honor, I just have one  
22 issue. The document 41.9 has a date of March 14th.



1 Was that the date when it was corrected? Because I  
2 think it was later than that.

3 MS. POLEK-O'BRIEN: This was just within the  
4 last day or two. So it's just an error left over  
5 from the last one.

6 MR. KAMINSKI: With that, that's fine.

7 JUDGE DOLAN: Subject to that, it will be  
8 admitted into the record.

9 (Whereupon, ComEd Exhibit Nos. 10.0, 10.01 through  
10 10.30, 24.0, 24.01 through 24.10, 41 Public, 41  
11 Confidential, 41.01 through 41.08, 41.09 Corrected  
12 were admitted into evidence as of this date.)

13 MR. ROONEY: I think Mr. Alongi and Mr.  
14 McInerney are done, your Honor.

15 JUDGE DOLAN: Yes. Thank you, gentlemen.  
16 You're excused.

17 Mr. Bernstein, are you ready to start  
18 with your witness?

19 MR. BERNSTEIN: We are. Our next witness is  
20 Paul R. Crumrine.

21 JUDGE DOLAN: Okay. Mr. Crumrine, please raise  
22 your right hand.

1 (Witness sworn.)

2 JUDGE DOLAN: Thank you.

3 MR. BERNSTEIN: Your Honor, Mr. Crumrine is  
4 sponsoring three pieces of testimony. The first is  
5 Corrected Exhibit 9.0 and include -- as well as  
6 Exhibits 9.1, 9.2, and 9.3. They comprise  
7 Mr. Crumrine's direct testimony.

8 However, there is an additional  
9 correction to be made at this stage basically  
10 correcting a very minor error in the testimony.  
11 I'd like to question Mr. Crumrine about it at this  
12 time.

13 JUDGE DOLAN: Okay.

14 PAUL R. CRUMRINE,  
15 called as a witness herein, having been first duly  
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY

19 MR. BERNSTEIN:

20 Q. Mr. Crumrine, I direct your attention to a  
21 document that is Exhibit 9.0 Corrected. Are there  
22 any additional corrections you would like to make

1 to that testimony at this time?

2       **A.**     Yes. There's one minor correction on Page  
3 46, Line 986. Toward the end of that line, there  
4 is a reference to Schedule B-2.4. The reference  
5 should be to Schedule B-2.3.

6       JUDGE DOLAN: When was that corrected testimony  
7 filed, do we know?

8       MR. BERNSTEIN: Filed December 15, 2005.

9       JUDGE DOLAN: Okay. All right. Proceed.

10       MR. BERNSTEIN: Mr. Crumrine will also be  
11 sponsoring ComEd Exhibit 23.0, 23.1, 23.2, and  
12 23.3. And, once again, there are a couple of very  
13 minor corrections to be made on one of those.

14 BY MR. BERNSTEIN:

15       **Q.**     Mr. Crumrine, I direct your attention to  
16 ComEd Exhibit 23.0. Are there any corrections or  
17 changes you'd like to make to that at this time?

18       **A.**     There are two minor corrections. The first  
19 is on Page 38, Line 806. The parenthetical  
20 reference refers to IAWA Exhibit 1.0. It should be  
21 corrected to refer to CUB-CCSAO Exhibit 3.0.

22               And, similarly, on Page 39, Line 826,

1 the parenthetical reference also incorrectly refers  
2 to IAWA Exhibit 1.0 when it should refer to  
3 CUB-CCSAO Exhibit 3.0.

4 Those are the only changes to 23.0.

5 MR. BERNSTEIN: Finally, Mr. Crumrine is also  
6 sponsoring corrected surrebuttal testimony that was  
7 filed on March 20th, 2006. It's ComEd  
8 Exhibit 40.0. And it also includes Exhibit 40.1  
9 and Exhibit 40.2. We move the admission into  
10 evidence of each of those exhibits with the  
11 corrections noted in the record.

12 JUDGE DOLAN: Any objections? All right.

13 Then ComEd Corrected Exhibit 9.0, along  
14 with attachments 9.1, 9.2, and 9.3, will be  
15 admitted into the record.

16 ComEd Exhibit 23.0, along with  
17 attachments 23.1, 21.2, and 23.3, will also be  
18 admitted into the record. And ComEd Exhibit --  
19 Corrected Exhibit 40.0, along with 40.1 and 40.2,  
20 will also be admitted into the record. Thank you.

21

22

1 (Whereupon, ComEd Exhibit Nos. 9.0, 9.1, 9.2, 9.3,  
2 23.0, 23.1, 23.2, 23.3, 40.0, 40.1, 40.2 were  
3 admitted into the record as of this date.)

4 JUDGE DOLAN: Ready to proceed, Mr. Feeley?

5 MR. FEELEY: Sure.

6 CROSS EXAMINATION

7 BY

8 MR. FEELEY:

9 Q. Good afternoon, Mr. Crumrine. My name is  
10 John Feeley. I have some cross questions for you  
11 and my co-counsel, Mr. Brady, may have some  
12 questions for you as well.

13 A. Good afternoon.

14 Q. If I could direct your attention to your  
15 rebuttal testimony, Page 60, Lines 1284 through  
16 1294, and actually onto -- also to Lines -- up to  
17 Lines 1300.

18 A. I have it.

19 Q. And in your testimony there, you're quoting  
20 from the language from the Generic Coal Tar Order  
21 in Docket 91-0080 through 0095 consolidated;  
22 correct?

1       **A.**     That's correct.

2       **Q.**     So you're familiar with that order then;  
3 correct?

4       **A.**     Yes.

5       **Q.**     Okay. Do you know if the recovery of  
6 non-MGP costs was an issue in that proceeding?

7       **A.**     I believe it was not.

8       **Q.**     Pardon?

9       **A.**     I believe that the recovery of non-MGP  
10 costs was not an issue in that case.

11      **Q.**     Okay. You said that you've reviewed that  
12 order; correct?

13      **A.**     That's correct.

14      MR. FEELEY: May I approach the witness?

15      JUDGE DOLAN: Yes.

16      BY MR. FEELEY:

17      **Q.**     Okay. I've handed to you a copy of the  
18 Commission's order from that Generic Coal Tar  
19 proceeding, and I've tabbed two pages there. Do  
20 you see those?

21      **A.**     Yes, I do.

22      **Q.**     Actually, in the copy that I provided you,

1 I put some brackets around some language from that  
2 order. If you could review that and let me know  
3 when you've looked at that.

4 **A.** I've looked at the two areas that you've  
5 marked.

6 **Q.** Okay. Would you agree that in that order,  
7 the issue of non-MGP costs actually was discussed  
8 in that proceeding?

9 **A.** I don't claim to be an environmental  
10 remediation expert, but the way I read this is not  
11 in the way I answered your first question. When we  
12 talk about MGP costs in our environmental cost  
13 recovery rider, we're talking about sites other  
14 than those designated as MGP sites.

15 The language in the order, as I'm  
16 reading it here, talks about other environmental  
17 contaminants but located at MGP sites. I  
18 distinguish between a site that is an MGP site that  
19 may have contaminants other than coal tar that also  
20 require environmental remediation and non-MGP sites  
21 that need remediation.

22 **Q.** Okay. So -- but an issue -- I think you

1 just stated that in the coal tar proceeding, there  
2 were remediation costs at MGP sites, but it wasn't  
3 related to coal tar; correct?

4 **A.** Again, the nonenvironmental expert in me  
5 says they're all related to coal tar. I mean, they  
6 were a function of manufacturing gas at those  
7 plants that have a myriad of contaminants. I was  
8 not intending to be that specific in my comment in  
9 my earlier question.

10 To me, these are all MGP-related cleanup  
11 costs that the Commission was talking about. I do  
12 not consider them to be non-MGP related in the  
13 context of the majority of my testimony regarding  
14 Rider ECR.

15 **Q.** Okay. On that first page that I have  
16 tabbed, do you see the text in brackets there and  
17 its reply exceptions?

18 **A.** I see it.

19 **Q.** Could you just please read that for the  
20 record.

21 **A.** In its reply to exceptions, Commonwealth  
22 Edison and NIGAS also disagree with Staff's



1 recommendation. Edison argues in part, quote, a  
2 utility legally obligated to incur costs to  
3 remediate an MGP site containing coal tar toxins  
4 may also be legally required to clean up other  
5 commingled environmental contaminants, closed  
6 quote. And there's a parenthetical reference to  
7 Exelon -- excuse me, Edison reply to exceptions at  
8 11, comma, 12.

9       **Q.** Okay. And if you could go to that second  
10 page that I have tabbed there, the language that I  
11 have in brackets, could you read that into the  
12 record, please.

13       **A.** The question in dispute between Staff and  
14 utilities including Peoples, slash, North Shore,  
15 concerning whether the types of cleanup activities  
16 subject to cost recovery should include those  
17 directed to all residues found at the location of  
18 former MGP sites, can be addressed when utilities'  
19 specific recovery proposals are brought before the  
20 Commission.

21       **Q.** Okay. And would you agree in that coal tar  
22 proceeding, the Commission was -- with respect to

1 what I'll call non-MGP costs, the Commission was  
2 considering open only found at former MGP site  
3 locations?

4 **A.** I'm a little bit troubled by using the term  
5 non-MGP costs at MGP sites. I think that will be  
6 confusing to everything that I've written in my  
7 testimony.

8 We have environmental remediation costs  
9 at MGP sites that are related to coal tar itself  
10 and other contaminants that may not be specifically  
11 related to coal tar.

12 When I talk about non-MGP costs, I am  
13 talking about all costs of environmental  
14 remediation at sites other than MGP sites. So I'm  
15 differentiating between sites. I am not attempting  
16 to differentiate between types of toxins and types  
17 of contaminants that might need remediation at a  
18 particular site.

19 **Q.** Okay. Using your definition of non-MGP  
20 costs, would you agree that the coal tar order was  
21 not addressing those non-MGP costs as you defined  
22 it?

1       **A.**     Using my definition, I agree that this  
2     order does not address those costs.

3       **Q.**     All right. Can you go to Page 70 of your  
4     surrebuttal, Exhibit 40.

5       **A.**     I have it.

6       **Q.**     Okay. And, specifically, Lines 1589  
7     through 1591, do you have that in front of you?

8       **A.**     Yes, I do.

9       **Q.**     You state there that ComEd is willing to  
10    accept Staff's proposal with respect to land  
11    acquisition costs. Then in parentheses, you have,  
12    With certain language modifications as discussed  
13    below solely in the interest of narrowing issues on  
14    this matter.

15                   And you were -- that's the position of  
16    ComEd; correct?

17       **A.**     That's correct.

18       **Q.**     Okay. So you're accepting Staff's language  
19    that excludes the recovery of land acquisition  
20    costs under the rider?

21       **A.**     For the purposes of narrowing the issues in  
22    this case, yes, that's correct.

1       **Q.**     Okay.  If you could go to Lines 1594  
2     through 1600.  In your testimony there, you discuss  
3     the recovery of the costs of land leases under  
4     Rider ECR.  Do you see that?

5       **A.**     Yes, I do.

6       **Q.**     Could you give -- explain in detail what  
7     those land lease costs are and how they relate to  
8     MGP site remediation?

9       **A.**     Again, I'm not an environmental remediation  
10    expert, but as I understand them, there may be  
11    times in which during the course of cleanup, the  
12    company and other PRPs may have to lease land from  
13    the owner during the time period of remediation.

14               And it is the company's position that  
15    the costs of leasing the land during that time  
16    period should continue to be recovered under Rider  
17    ECR even though we are agreeing that should we have  
18    to acquire the land through a purchase, we would  
19    not seek to recover those costs.

20       **Q.**     Okay.  And -- but the leased land, it could  
21    be adjoining the area that's being remediated as  
22    well, or is it just the remediated site or --

1       **A.**     If it's related to our costs for  
2     remediating the site, whether it's immediate or  
3     nearby, I would believe that it's all included.

4       **Q.**     All right. Okay. If you could go to your  
5     Exhibit 40.2, Page 1 of 3. On Page 1 of 3 of  
6     Exhibit 40.2, you've stricken the language  
7     "purchased"; correct?

8       **A.**     That's correct.

9       **Q.**     So as you propose that, that provision  
10    would read, Acquisition costs of land leased or  
11    otherwise used for remediation?

12      **A.**     That's correct.

13      **Q.**     Okay. And what you mean by there is what  
14    you just described? For whether you might have to  
15    lease land to perform the remediation, is that what  
16    you mean by having that language there?

17      **A.**     Yes. This is to indicate our agreement  
18    with Staff that costs regarding purchasing or  
19    acquiring land would be excluded. That's the  
20    stricken word "purchased." The word "leased"  
21    remains so that those costs will continue to be  
22    recovered.

1       **Q.**     Okay. All right. Do you recall in your --  
2 both in your direct and rebuttal testimony, you  
3 talk about the fact that, in your opinion or  
4 ComEd's opinion, having a mid-year reconciliation  
5 would avoid the need to increase staffing. Do you  
6 recall that in both pieces of testimony?

7       **A.**     I think it's a September 30th filing rather  
8 than mid-year; but, yes, something other than a  
9 calendar year helps level out our workload.

10      **Q.**     Okay. Have you quantified what increased  
11 staffing would be if the Commission approved a  
12 year-end reconciliation rather than a September  
13 30th reconciliation that you recommend?

14      **A.**     No.

15      MR. FEELEY: That's all I have, but Mr. Brady  
16 has some questions for you.

17      THE WITNESS: Thank you.

18                   CROSS EXAMINATION

19                   BY

20                   MR. BRADY:

21      **Q.**     Hi, Mr. Crumrine. How are you?

22      **A.**     Okay so far.

1       **Q.**     Good.  I have a few questions for you  
2     regarding Rider 4 and Rider POG.

3                 Rider 4 relates to the parallel  
4     operation of customers generating facilities; is  
5     that correct?

6       **A.**     That's correct.

7       **Q.**     Can you briefly describe what that rider  
8     relates to?

9       **A.**     It provides the terms and conditions under  
10    which ComEd purchases energy from qualifying  
11    facilities, sometimes known as QFs, subsequent  
12    to -- not subsequent -- in compliance with the  
13    Administrative Code Part 430.

14       **Q.**     Do you know currently how many QFs take  
15    from Rider 4?

16       **A.**     I don't know for sure.

17       **Q.**     That's fine.  Would you happen to know if  
18    the -- if the majority of those customers are under  
19    10 megawatts?

20       **A.**     I believe the majority are under  
21    10 megawatts.

22       **Q.**     Now, is it your understanding that a QF can

1 either take a standard energy rate which is set  
2 forth in Rider 4 or they could negotiate an energy  
3 rate or a capacity rate?

4       **A.**     They can negotiate that with the utility as  
5 well as any third-party.

6       **Q.**     Now, do the QFs have contracts with ComEd  
7 in addition to the Rider 4?

8       **A.**     They actually have a Rider 4 contract.  
9 They sign a contract to memorialize that they're  
10 taking service under Rider 4.

11       **Q.**     Does each QF have a separate contract?

12       **A.**     Yes.

13       **Q.**     Of those contracts, do you know how many  
14 have negotiated an energy rate or a capacity rate?

15       **A.**     I'm not certain, but if there's any, it's  
16 only maybe one or two.

17       **Q.**     Sounds like kind of a small number. Is  
18 that a fairly small percentage then of the overall  
19 number?

20       **A.**     I believe we have a contract with one of  
21 the wind (ph) generators. I'm not sure whether  
22 there's even a seconds, but it's a very small



1 percentage of the overall Rider 4 group.

2 Q. Do you happen to have a copy of Rider 4  
3 with you? If not, I have a copy I could provide to  
4 you.

5 A. I don't have the entire Rider 4. I only  
6 have the one sheet that was filed in the case.

7 MR. BRADY: May I approach the witness?

8 Your Honor, Rider 4 is already part of  
9 the record pursuant to part of ComEd's filing. So  
10 I wasn't going to mark it as an exhibit for the  
11 sake of I have just a couple of questions, if  
12 that's all right.

13 BY MR. BRADY:

14 Q. Mr. Crumrine, do you recognize the document  
15 in front of you as being Rider 4?

16 A. Yes, I do.

17 Q. And do you have the first page there in  
18 front of you?

19 A. Yes.

20 Q. Now, is it ComEd's intent to eliminate a  
21 QF's ability to negotiate energy rates or capacity  
22 rates other than what is stated in Rider POG?

1       **A.**     Well, just to be clear, Rider POG does not  
2     eliminate the customer's opportunity to do that.  
3     That's memorialized in the Administrative Code  
4     Part 430. There is a paragraph in POG that is  
5     intended to make clear that ComEd would offer that  
6     as it's required in Part 430.

7       **Q.**     Okay. Thank you.

8                   Turning back to Rider 4, do you see at  
9     the bottom of the page there is a heading that  
10    says, Level of Compensation? Do you see the  
11    heading?

12       **A.**     Yes, I do. This is just for clarity. This  
13    is labeled in the right-hand corner as sheet No.  
14    63. But, yes, I do see it.

15       **Q.**     Underneath that is another heading Option  
16    A?

17       **A.**     Right.

18       **Q.**     And then there's the first sentence there,  
19    Unless the customer negotiates a different  
20    compensation arrangement with the company pursuant  
21    to '83 Illinois Administrative Code Part 430, the  
22    customer electing this option shall be entitled to

1 sell the output of the qualifying facility to the  
2 company at the following rates per kilowatt hour  
3 determined in accordance with Section 430.80 of  
4 that Administrative Code? Did I read that  
5 correctly?

6 **A.** Yes, you did.

7 **Q.** Is the first half of that paragraph -- that  
8 that sentence I read to you refers to the  
9 customer's ability to negotiate a different  
10 compensation under Part 430; correct?

11 **A.** That's correct.

12 **Q.** You had mentioned that previously in your  
13 answer that 430 grants QFs that ability?

14 **A.** Correct.

15 **Q.** Would you be willing to or did -- is -- let  
16 me restate that question.

17 Is language similar to the first half of  
18 this sentence where -- up to Part 430 included in  
19 Rider POG?

20 **A.** Yes, it is. It's in a different section of  
21 Rider POG. It's on the last page of the rider.  
22 And there is a sentence that I would just read. It

1 says, The company and the retail customer may, by  
2 contract, modify any of the provisions contained in  
3 this rider consistent with regulations of the  
4 Illinois Commerce Commission.

5           That is intended to memorialize in Rider  
6 POG the customer's ability to negotiate one of  
7 these two alternative contracts as permitted under  
8 Part 430. It's different language than what is  
9 currently in Rider 4, but it is intended to grant  
10 the same privilege to the customer.

11       **Q.** But that language is, as you acknowledged,  
12 at the back of Rider POG?

13       **A.** That's correct. It's on the last page  
14 rather than on the first page.

15       **Q.** Would ComEd be willing to add a phrase  
16 similar to the first part of this sentence up to  
17 430 to the first part of Rider POG under service  
18 options?

19       **A.** This is actually under compensation. And  
20 on the second page of Rider POG is where the  
21 portion of compensation begins.

22           But, yes, the company would be willing

1 to add a phrase or a sentence similar to what is in  
2 this paragraph that we're talking about in Rider 4  
3 and add that at the beginning of the compensation  
4 section in Rider POG to make it ultraclear that the  
5 customer has that opportunity.

6 MR. BRADY: Great. Thank you. No further  
7 questions.

8 (CHANGE OF REPORTER).

9 CROSS-EXAMINATION

10 BY

11 MR. KAMINSKI:

12 Q. I'm Mark Kaminski, with the Illinois  
13 Attorney General's Office.

14 A. Good afternoon.

15 Q. The company is proposing to reduce the  
16 number of different rates for customer classes in  
17 these delivery service tariffs, correct?

18 A. It's reducing the number of customer  
19 classes in the service tariffs, yes.

20 Q. Are you the company witness primarily  
21 responsible for the proposed new customer classes?

22 A. Yes.

1       **Q.**     Are there any other company witnesses who  
2     contributed to your effort to develop these new  
3     customer classes?

4       **A.**     Yes.

5       **Q.**     Who were they?

6       **A.**     There were many people involved in the  
7     cooperate effort, but the two witnesses would be  
8     Mr. Alongi and McInerney, who sponsored joint  
9     testimony as well.

10      **Q.**     Under the current bundled rates, every  
11     residential customer is classified as either being  
12     single-family or multi-family, correct?

13      **A.**     That's correct.

14      **Q.**     And the single-family classifications for  
15     customers who live in a building that only have one  
16     or two residential units?

17      **A.**     That's correct.

18      **Q.**     And the multi-family classification is for  
19     residential customers living in buildings with  
20     three or more residential units?

21      **A.**     Correct.

22      **Q.**     And under the current bundled rates,

1 there's a different customer charge for  
2 single-family and multi-family customers; is that  
3 correct?

4 **A.** That's correct.

5 **Q.** The bundled rate customer charge is also  
6 designed to include metering costs, correct?

7 **A.** That's correct.

8 **Q.** And under the current bundled rate,  
9 residential customers are also classified based on  
10 whether they have electric space heating or not,  
11 correct?

12 **A.** That is one of the additional rate options  
13 other than the general service rate that's  
14 available to residential customers.

15 **Q.** Under the current bundled rate, there's a  
16 different charge for the per watt hour for  
17 residential heating and nonheating customers,  
18 correct?

19 **A.** They're actually under two separate grades,  
20 but they do also contain separate additional  
21 charges.

22 **Q.** And that kilowatt hour charged is designed

1 to include both energy costs and distribution  
2 costs, correct?

3 **A.** I would say that the energy component is  
4 designed to cover all noncustomer-related costs,  
5 including capacity, energy, and transmission and  
6 distribution-related costs.

7 **Q.** So the kilowatt hour charge under current  
8 rates is designed to include both the energy costs  
9 and the distribution costs, correct?

10 **A.** In today's bundled rates -- and I think all  
11 I did was agree with you, but I had to make it  
12 clear that it's not just energy and delivery. I  
13 wanted to make clear that it's also transmission  
14 delivery and the capacity related to the energy are  
15 all included in today's bundled energy costs.

16 **Q.** Okay. So just to make sure the record's  
17 clear, the kilowatt hour charge is designed to  
18 include, but is not exclusive, beyond energy costs  
19 and distribution costs, right?

20 **A.** Correct.

21 **Q.** In this docket, you're proposing to  
22 consolidate all of the current residential customer



1 classes into a single class, correct?

2       **A.**     For delivery cost purposes, yes.

3       **Q.**     And under your proposal, would all

4 residential customers be subject to the same

5 customer charge?

6       **A.**     Yes.

7       **Q.**     Would they also be subject to the same

8 meter charge?

9       **A.**     Yes.

10       **Q.**     And would they also be subject to the same

11 per kilowatt hour distribution charge?

12       **A.**     Yes.

13       **Q.**     Are you also proposing a change the number

14 of nonresidential customer classes?

15       **A.**     That's correct.

16       **Q.**     Excluding the lighting class, how many

17 nonresidential customer classes are there under the

18 current bundled rates?

19       **A.**     You're testing my memory of the definition

20 of customer classes in the 1994 bundled rate case.

21 Nonresidential, to the best of my knowledge, there

22 was Rate 6, Rate 6L, 1 to 10, Rate 6L over 10,

1 stand-by service, interruptible service, pumping,  
2 and depending upon what you count railroads as  
3 another nonresidential class, excluding the  
4 streetlighting, I count seven, if my memory from  
5 the last bundled rate case 12 years ago was  
6 correct.

7 I should note that those include  
8 differentiations for both delivery at the commodity  
9 bill. So they're not directly comparable to the  
10 number of customer classes we're talking about in  
11 this docket.

12 Q. How many nonresidential and nonlighting  
13 classes would there be under your proposed rates?

14 A. In Table 4 on my direct testimony on Page  
15 34, starting with the "watt hour delivery class,"  
16 going up to the "high voltage delivery class," it's  
17 six, if you want to count the railroad class as a  
18 seventh class, it is seven. But these are only for  
19 delivery purposes, not for commodity purposes.

20 Q. I'm sorry. Could you give me that citation  
21 again.

22 A. It's Page 34 of my direct on Table 4.

1       **Q.**     Thank you. With the inception of small  
2     nonresidential customers without demand meters,  
3     would it be fair to say that your nonresidential  
4     rate groupings are based on a customer's maximum  
5     level of electricity demand?

6       **A.**     Again, assuming we're continuing to exclude  
7     the streetlighting customers, I would agree with  
8     you.

9       **Q.**     When did the company make the decision to  
10    propose consolidating all nonlighting,  
11    nonresidential customers into a few rate classes?

12      **A.**     I can't give you a specific date. The --  
13    this issue has been looked at by the Company over  
14    the course of the last couple of years.

15      **Q.**     And many of the schedules and studies filed  
16    with this rate case have to use those consolidated  
17    rate classes, correct?

18      **A.**     Yes.

19      **Q.**     And the cost of service prepared by  
20    Mr. Heintz would propose consolidated customer  
21    classes as well?

22      **A.**     The one initially filed does, yes.

1       **Q.**     And Mr. Heintz would've to have known the  
2     customer classes in order to prepare his cost of  
3     service study, correct?

4       **A.**     That is correct.

5       **Q.**     And any schedule that breaks down revenues  
6     by customer class would have to be prepared after  
7     you decided what the new customer classes would be?

8       **A.**     Yes.

9       **Q.**     And the bill -- I'm sorry. Strike that.

10               The bill frequency analyses rely on the  
11     new customer classifications also?

12       **A.**     I would have to double-check with the  
13     frequency filing portion of the filings. It's been  
14     too long since I've looked at. I don't recall for  
15     sure.

16       **Q.**     The load research schedule was relying on  
17     the new customer classifications, correct?

18       **A.**     That is my understanding, yes.

19       **Q.**     So when you decided on what customer  
20     classes the Company would propose, Mr. Heintz' cost  
21     of service study was not yet done, correct?

22       **A.**     The one that we actually filed initially in

1    this case, no, it was not done.

2           **Q.**    When the Company decided what customer  
3    classes the Company would propose, did the Company  
4    have a cost of service study based on the existing  
5    reclassifications?

6           **A.**    Yes.

7           **Q.**    Did that cause a service study to address  
8    nonresidential customers?

9           **A.**    Yes.

10          **Q.**    Was it based on the same test year as the  
11   cost of service study that was offered in the  
12   initial filing?

13          **A.**    No, I'm thinking of the cost of service  
14   study that we filed in the last delivery case based  
15   on the 2000 test year using the old customer  
16   classes.

17          **Q.**    So that is the most recent cost of service  
18   study based on the existing rate classifications?

19          **A.**    Yes. Well, I should be clear, there -- we  
20   did an analysis, and this is in my testimony with  
21   regard to residential to show what the breakdown  
22   would be. We also have done a subsequent study on

1 the nonresidential side for customers over one  
2 megawatt to show how the four classes -- four old  
3 classes over one megawatt combined into a single  
4 class.

5               So there have been additional analyses  
6 performed during the course of this work.

7       **Q.**    I'm sorry. The last part was during the  
8 course of...?

9       **A.**    This work.

10       **Q.**    "This work" being this case?

11       **A.**    Yes.

12       **Q.**    Now, under the Company's proposal, what is  
13 the dividing line between medium load and large  
14 load, nonresidential customers?

15       **A.**    The breaking -- the point of  
16 differentiation between medium and large is 400  
17 kilowatts.

18       **Q.**    Now, would you agree that where a  
19 nonresidential customer is adjusted above or below  
20 the 400-kilowatt threshold there is a significant  
21 difference on that customer's bill depending on  
22 which customer class that customer falls into?

1       **A.**     I don't know whether I would call it  
2     significant, but there is a difference, that's  
3     true.

4       **Q.**     Do you have Tariff Sheet 369?

5       **A.**     Just for clarity, I'm looking at  
6     Exhibit 10.1 attached to the testimony of  
7     Alongi/McInerney and I do have Sheet 369.

8       **Q.**     Thank you. What is the Company's proposed  
9     customer charge for a medium load, nonresidential  
10    customer?

11      **A.**     \$12.73.

12      **Q.**     And what is the Company's proposed customer  
13    charge for a large load, nonresidential customer?

14      **A.**     \$91.33.

15      **Q.**     The meter charges and the demand charges  
16    were also higher for large load, nonresidential  
17    customers than for medium load, nonresidential  
18    customers, correct?

19      **A.**     That's correct.

20    (Whereupon, AG Cross Exhibit No. 5 was marked for  
21    identification, as of this date.)

22

1 BY MR. KAMINSKI:

2 Q. Please see what has been marked for  
3 identification as AG Cross Exhibit No. 5.

4 A. I do have it.

5 Q. Thank you. It contains calculations  
6 regarding a few hypothetical customers. I'm going  
7 to ask you a couple questions about this.

8 First of all, it describes a medium  
9 load, nonresidential customer with 300 -- or 399  
10 kilowatt demand. This hypothetical ignores energy  
11 costs, taxes, franchise charges.

12 Under this hypothetical, for the medium  
13 load customer, a monthly charge -- customer charge  
14 would be \$12.73, right?

15 A. That's correct.

16 Q. And the monthly metering charge would be  
17 \$13.14, correct?

18 A. That's correct.

19 Q. And the demand charge would be the \$5.35  
20 per kilowatt times the 399 kilowatts, correct?

21 A. Correct.

22 Q. Which results in a total charge to that



1 customer for the month of \$2,160.52, correct?

2       **A.**    I don't have a calculator --

3       **Q.**    Would you --

4       **A.**    -- but I'll accept that somebody did this

5 calculation correctly. It looks approximately

6 correct.

7       **Q.**    And for the large load customer with a

8 401 kilowatt demand, also ignoring energy costs,

9 taxes and franchise charges, the monthly customer

10 charge is 91.33?

11       **A.**    Correct.

12       **Q.**    And the monthly metering charge is \$20.12?

13       **A.**    Correct.

14       **Q.**    And the demand charge is equal to the \$5.67

15 cents kilowatt charge times 401 kilowatts?

16       **A.**    That's correct.

17       **Q.**    Resulting in a total, subject to check, of

18 \$2,385.12 for that month?

19       **A.**    Assuming the math's correct, yes.

20       **Q.**    In this scenario, the large load,

21 nonresidential customer would pay over \$224 more

22 than the medium load customer for a demand of just

1 two kilowatts less, correct?

2       **A.**     I'm assuming that what you mean by this is  
3 that the medium load customer at 399 is a customer  
4 whose load is consistently below 400 kilowatts, and  
5 does not otherwise qualify for the large customer  
6 class. And, likewise, that a customer whose load  
7 is 401, that he also does not otherwise qualify for  
8 a different customer class.

9               Customer classes are set based on  
10 maximum demands in a 12-month period -- rolling  
11 12-month period, and there's additional assumptions  
12 that have to go along with that.

13              But assuming that the -- these customers  
14 were properly categorized at the medium and large  
15 load, it appears you've done the math correct as  
16 far as the math goes.

17       **Q.**     So would you agree that determining where  
18 the dividing line is drawn between customer classes  
19 can have a significant impact upon individual  
20 customers?

21       **A.**     I'm not sure that I can agree with that as  
22 I sit here, no.

1       **Q.**     Is the reason why you can't agree because  
2     you do not have a definition of significant?

3       **A.**     The reason I can't agree is because I don't  
4     have the total -- this does not give the total  
5     picture of the impact on the customer's bill. For  
6     example, it ignores the fact that the large load  
7     customer, once a customer gets classified into that  
8     category, it actually gets a different meter. It  
9     is subject to different energy charges as well.

10                   And without knowing the total bill  
11     impact on the customer, I can't give a  
12     characterization as I sit here as to whether I  
13     consider it significant or not.

14       **Q.**     So a large load customer, as it is  
15     determined to be so, not only pays a different  
16     charge, but also gets a different meter?

17       **A.**     That's correct.

18       **Q.**     And is this other meter resulting in a  
19     larger -- also has a larger meter charge than the  
20     medium load customer, correct?

21       **A.**     That's correct.

22       **Q.**     Do you have ComEd Schedule E8(a)(1)(C)?

1 I can provide it.

2 A. I do not have it ready, no.

3 (Whereupon, AG Cross Exhibit No. 6 was marked  
4 for identification, as of this date.)

5 BY MR. KAMINSKI:

6 Q. Please see what's been placed in front of  
7 you, which is marked for identification as AG Cross  
8 Exhibit No. 6. This is Schedule E8, parens, a  
9 little A, parens, parens, one, parens, parens,  
10 large C, parens, Page 1 of 3.

11 Do you know what percentage of bills of  
12 large load, nonresidential customers are between  
13 400 and 500 kilowatts?

14 A. Based on this bill distribution, it would  
15 be the sum of roughly 12.9 percent and  
16 10.8 percent, if my math's correct, that's about  
17 23.7 percent.

18 Q. How did you determine the dividing line  
19 between medium and large load customers should be  
20 400 kilowatts versus, say, 425, 450, 375?

21 A. It has been a -- the break point for  
22 delivery class purposes since the beginning of open

1 access in 1999. It was one of the break points  
2 from day one.

3 Q. How did you determine how many  
4 nonresidential, nonlighting customer classes to  
5 propose in this case?

6 A. It was based on a comprehensive analysis of  
7 the underlying costs that ComEd incurs to serve the  
8 customers between classes. And based on the -- an  
9 appropriate balancing of proper differentiation  
10 between customers and their costs, balanced with  
11 administrative simplicity, easier -- more  
12 understandability for customers, fewer classes  
13 general being easier for customers to understand  
14 than more, and it was a balance of all of the  
15 rate-making aspects that go into that.

16 Q. Was your determination of the dividing line  
17 between nonresidential, nonlighting customer  
18 classes also based on those considerations?

19 A. I thought that was what you just asked me  
20 about. I thought you asked me about  
21 nonresidential, nonlighting classes. And all of  
22 our customer classes and their delineations were

1 based on that type of an analysis.

2 Q. And was your decision to collapse all  
3 residential customers into a single rate class  
4 based on that as well?

5 A. Yes, it was.

6 Q. Can you refer to your rebuttal at Lines 425  
7 to 429. It's Page 21.

8 A. I'm sorry, what line number again?

9 Q. Page 20. The line numbers are 425 to 429.

10 A. I have them.

11 Q. Now, you say that residential distribution  
12 costs are not generally related to the use of  
13 electricity, correct?

14 A. That's correct.

15 Q. By this statement, do you mean that  
16 distribution system costs are primarily related to  
17 the maximum demand placed on the system by a  
18 customer and not by the total number of kilowatt  
19 hours used by that customer during the year?

20 A. That's correct.

21 Q. Are you proposing to recover these  
22 distribution costs through a kilowatt-hour charge?

1       **A.**     I'm sorry, which are "these distribution  
2     costs"?

3       **Q.**     The residential distribution costs.

4       **A.**     To the extent that there are distribution  
5     costs that are customer-related and meter-related,  
6     which are recovered through the monthly customer  
7     charge and the monthly metering charge, the  
8     remainder of the distribution costs would be  
9     recovered through the per kilowatt-hour charge.

10      **Q.**     And that is because residential customers  
11     are not equipped with demand meters, correct?

12      **A.**     That is one of the reasons, yes.

13      **Q.**     So if you have two residential customers  
14     who place about the same maximum demand on the  
15     distribution system, would you expect the cost of  
16     serving these customers to be about the same?

17      MR. BERNSTEIN:   May I have that read back?

18                   Was that limited to residential  
19     customer?

20      MR. KAMINSKI:    Yes.

21      THE WITNESS:    It's very difficult to generalize  
22     because two different customers may have the same

1 maximum demand, but they have to be situated within  
2 the distribution system in similarly-designed areas  
3 of the distribution system. And our rates do not  
4 distinguish between densities and other things and  
5 the specifics of geographic regions.

6           If you assume that they are, you know,  
7 two single-family homes a block apart in the same  
8 subdivision -- I would probably call that similarly  
9 situated -- I would say that, yes, it's based on  
10 their demand.

11 BY MR. KAMINSKI:

12       **Q.** In your answer, you refer to rates, are you  
13 referring to current rates, or your proposed rates,  
14 or both?

15       **A.** I was referring to costs, not to rates.

16       **Q.** Is the distribution cost to serve a  
17 residential customer higher if the customer's  
18 maximum demand occurs at the same time that a  
19 significant majority of the other customers are  
20 also reaching their maximum of demand?

21       **A.** I'm having a hard time answering that  
22 because higher is a relative question, and you just



1 asked me a question, which, in effect, all  
2 customers are contributing at the same time to a  
3 similar degree.

4 I don't know that they would be higher  
5 than the other similarly-situated customers at that  
6 point in time if they're all exerting the same type  
7 of load on the system at the same time.

8 **Q.** Okay. Relative to a customer whose maximum  
9 demand occurs at a time other than what a  
10 significant majority of other customers are  
11 reaching their maximum demand, is the distribution  
12 cost of a surveyed residential customer higher than  
13 that customer if a customer's maximum demand occurs  
14 at the same time that a significant majority of  
15 other customers are also reaching their maximum  
16 demand?

17 **A.** This is a very difficult question to answer  
18 for a very specific residential customer whose load  
19 is generally very small. Distribution systems are  
20 designed to handle regional and subregional areas.  
21 The only thing that ultimately has to handle one  
22 customer's load versus its neighbor's load is the

1 service connection running from the backyard to the  
2 meter.

3           The cost that ComEd incurs is really on  
4 a system-wide basis and it's difficult to make  
5 specific answers or to generalize too specifically  
6 about one customer. It depends on how different  
7 they're costs are, what was the customer's system  
8 designed for, regardless of their use. They're  
9 designed based on expected use.

10       **Q.** Now, when you refer to "customer's system,"  
11 what do you mean?

12       **A.** I'm sorry. I meant the distribution  
13 system, that it needed to serve the customer all  
14 the way from the meter all the way back up to the  
15 substation that may serve that general geographic  
16 region.

17       **Q.** Relative to the substation that you  
18 discussed, if a customer has their maximum demand  
19 occur at the same time as a significant majority of  
20 other customers are also reaching their maximum  
21 demand, wouldn't you agree that that totaled demand  
22 is relevant to what capacity substation you need

1 for that area?

2       **A.**    I agree it's relevant to that decision,  
3 yes.

4       **Q.**    Would you also agree that for a customer  
5 that does not meet their maximum demand at the same  
6 time as other significant -- I'm sorry -- at the  
7 same time as a significant majority of the other  
8 customers being served by that substation would  
9 have a less relevant effect on the capacity  
10 necessary for that substation?

11       **A.**    I think it's fair to say that the  
12 substation is designed to meet the maximum load  
13 that is expected to be carried by that substation  
14 when the accumulation of customers served by that  
15 substation will peak.

16               Customers served by that substation  
17 may -- will likely peak at different times, whether  
18 they be commercial, residential or not. It is the  
19 diversified demand on the substation, the  
20 coincident demand on that component that drives the  
21 size of the substation. I maybe just agreed with  
22 you, but I, perhaps, said it in a different way.

1       **Q.**    I just want to clarify one thing.  When you  
2   say "coincident demand," you're referring to the  
3   maximum demand of -- on the substation?

4       **A.**    The maximum demand on the equipment in that  
5   substation, that's what drives the size of that  
6   particular substation.

7   (Whereupon, AG Cross Exhibit    No. 7 was marked for  
8   identification, as of this date.)

9   BY MR. KAMINSKI:

10       **Q.**    Please see what I have provided to you  
11   marked as AG Cross Exhibit No. 3.

12               This is a hypothetical that describes  
13   two residential customers with identical maximum  
14   demand of three kilowatts in the summer months.  
15   There's Customer A and Customer B.

16               Customer A has the same usage level  
17   every month of the year.  Customer B has a peak  
18   usage in the summer of three kilowatts, and his  
19   consumption drops significantly in the other eight  
20   months.

21               Customer A also, in this assumption,  
22   uses three times more electricity per year than

1 Customer B.

2 In accordance with your testimony, would  
3 it be correct that the cost of providing a  
4 distribution service to Customer A and Customer B  
5 is roughly the same?

6 **A.** This hypothetical doesn't really give  
7 enough information to make that broad of a  
8 generalization. Again, there are so many specifics  
9 with regard to particularly the electrical  
10 geography within which these two customers reside,  
11 that it's difficult to make that kind of  
12 generalization on such a broad system wide  
13 statement.

14 **Q.** Let's go with the condition that you put on  
15 the other answer regarding two single-family homes  
16 in the same subdivision, with that added to the  
17 assumption, would you agree -- would it be correct  
18 that the cost to providing distribution service to  
19 Customer A and Customer B is roughly the same?

20 **A.** The cost in terms of dollars per kilowatt  
21 is probably pretty similar based on those very  
22 limited circumstances.

1       **Q.**     Under the proposed rates, Customer A would  
2     pay three times more than Customer B in  
3     distribution charges, correct?

4       **A.**     Based on this limited hypothetical because  
5     Customer A has three times more kilowatt hours.  
6     And assuming that they pay the same rate per  
7     kilowatt hour, they would pay three times as much,  
8     yes, that's correct.

9                                 (Whereupon, AG Cross Exhibit  
10                                No. 8 was marked for.  
11                                Identification, as of this  
12                                date.)

13    BY MR. KAMINSKI:

14       **Q.**     You have before what has been marked as AG  
15     Cross Exhibit No. 8. This is a hypothetical.

16                 So there are 60 residential customers in  
17     a neighborhood. 59 of the residential customers  
18     have a demand of, in the summer, three kilowatts,  
19     and in the nonsummer months, 1.5 kilowatts.

20                 There is one residential customer who  
21     has a demand based on space heating with a summer  
22     demand of three kilowatts, and a winter demand of

1 seven kilowatts.

2                   Would you agree that the distribution  
3 facility serving this neighborhood is designed to  
4 safely serve the peak summertime demand of the 60  
5 residential customers, which would be approximately  
6 180 kilowatts plus an adequate margin for safety?

7       **A.**     Not all of the components of the  
8 distribution system would be designed to meet that  
9 demand, no.

10       **Q.**     Would you agree that the substation would  
11 be designed to meet that demand?

12       **A.**     That substation may be designed to meet an  
13 entirely different demand at an entirely different  
14 time of year depending upon the mixture of other  
15 customers that are on that substation. There's  
16 usually a mixture of nonresidential, small  
17 business, medium business. You can have a mixture  
18 of customers on a substation. It is very difficult  
19 to sit here and generalize about system design.

20       **Q.**     Assume that there is a single substation  
21 serving these 60 residential customers.

22       **A.**     Okay. So I'm going to assume a system that

1 doesn't exist, and that it only serves these 60  
2 customers. If that were the case, that very  
3 limited hypothetical, it would likely be designed  
4 to handle a maximum summer demand for the 60  
5 customers.

6       **Q.** Now, with 60 -- a residential neighborhood  
7 of 60 customers, there would be other distribution  
8 pieces to it that would also serve all the  
9 customers, correct?

10       **A.** Once you start getting off the substation,  
11 it's unlikely that there is very many other  
12 components that serve all of the customers.

13       **Q.** Well, would you agree that the substation  
14 would be available throughout the year to those  
15 customers?

16       **A.** Any substation designed on our system is  
17 available at all times of the year, that's correct.

18       **Q.** And under this hypothetical, would the  
19 winter demand of seven kilowatts from the one  
20 residential space heater customer have a  
21 significant effect on the substation and its  
22 necessary --



1       **A.**     And we're still assuming the substation  
2     that's designed to serve nobody but these 60  
3     customers?

4       **Q.**     Correct.

5       **A.**     Based on these numbers, it's likely that  
6     the substation would be able to handle that winter  
7     load of that one customer, yes.

8       **Q.**     And the winter load of this one customer  
9     would not by itself require a larger substation  
10    that would be required to serve all of the 60  
11    customers in the summer months, correct?

12      **A.**     Again, in this extremely hypothetical 60  
13    customer substation, that substation will -- and  
14    based on the narrow conditions you have in this  
15    hypothetical, that substation will likely be  
16    designed to handle the summer peak, as long as  
17    we're only talking about the components that are  
18    inside the substation and not the components that  
19    are outside the substation.

20               Components outside the substation would  
21    not necessarily be designed in the same manner.

22

1 (Whereupon, AG Cross Exhibit.  
2 No. 9 was marked for.  
3 Identification, as of this.  
4 Date.)

5 BY MR. KAMINSKI:

6 Q. Referring to what has been marked as AG  
7 Cross Exhibit No. 9, Schedule E7, parens, B,  
8 parens, 3, parens, C, Part 1, Page 1 of 2.

9 Would you agree that this shows that the  
10 average residential single-family customer without  
11 space heating has a peak demand of about three  
12 kilowatts during the summer months?

13 A. It's the average per customer demand for  
14 the single-family nonspace heating subgroup. It's  
15 a simple division of the total load divided by the  
16 number of customers at that peak hour -- at that  
17 hour.

18 Q. You would agree that that demand for the  
19 summer months is approximately three kilowatts,  
20 correct?

21 A. Well, it's lower in July by almost a third,  
22 also in June by about a quarter. I mean, the

1 numbers are what they are. It's 2.5 in June, 2.3  
2 in July, 3.1 in August.

3 Q. So based on that -- based on these, the  
4 peak would be the 3.1, correct?

5 A. Yes, because in August -- on August 21st,  
6 2003, in hour 17, which would be hour ending  
7 5:00 p.m., that was the summer peak in the summer  
8 of 2003.

9 So that would be the highest load that  
10 they had on average in the summer during the summer  
11 of 2003.

12 Q. Would you also agree that the average per  
13 customer demand for residential single-family  
14 customers without space heating in the winter  
15 tapers off to approximately 1.5 kilowatts?

16 A. Given that it ranges from 0.7 to 1.7,  
17 rounding to one and a half is not an unreasonable  
18 average, based on these numbers in this calendar  
19 year.

20 Q. All right. Referring to the same schedule,  
21 would you agree that the schedule shows that the  
22 per customer demand average for single-family

1 customers with space heating also has a peak summer  
2 demand of approximately three kilowatts?

3       **A.**     Yes, on that same Octob- -- excuse me, on  
4 that same August 21st it was 3.0.

5       **Q.**     And would you agree that the average  
6 single-family customer with space heating demand  
7 peaks in the winter at about seven kilowatts?

8       **A.**     In January of '03, yes, it was seven  
9 kilowatts.

10                               (Whereupon, AG Cross Exhibit.  
11                               No. 10 was marked for.  
12                               Identification, as of this.  
13                               Date.)

14 BY MR. KAMINSKI:

15       **Q.**     Could you please now refer to what has been  
16 marked as AG Cross Exhibit 10. Referring to the  
17 bottom table under 3, this is -- sorry.

18                       First, this is Schedule E7B3, parens, A,  
19 parens, B, parens, Part 1, Page 1.

20                       Referring to the third table on this  
21 sheet, would you agree that the schedule shows that  
22 there are more than 2.1 million single-family

1 customers without space heating?

2 A. That's correct.

3 Q. And would you also agree that there are  
4 just a little over 36,000 single-family customers  
5 with electric space heating?

6 A. That's correct.

7 Q. Would you accept that one out of every 60  
8 residential single-family customers is a space  
9 heating customer?

10 A. It looks like it's about a ratio of 60  
11 to 1, yes.

12 Q. Now, referring to the standard schedule,  
13 would you agree that based on the monthly  
14 consumption shown on the top of this page that the  
15 average residential single-family without space  
16 heating customer consumes a little over 9,000  
17 kilowatt hours per year?

18 A. I'm sorry, which single-family group is  
19 that?

20 Q. That would be a single-family without space  
21 heating.

22 A. As you can see, the schedule doesn't add

1    them up, but...

2           **Q.**    Would you be willing to accept that subject  
3    to check?

4           **A.**    It looks about right.

5           **Q.**    Referring to the same schedule, would you  
6    also agree that based on the monthly consumption  
7    shown at the top of this page, that the average  
8    residential single-family with space heating  
9    consumes over 24,000 kilowatt hours per year,  
10   subject to check?

11          **A.**    It looks close, yes.

12          **Q.**    And based on those numbers, would you agree  
13   that, over the course of a year, the average  
14   single-family heating customer uses approximately  
15   2.7 times more electricity than the average  
16   single-family nonheating customer?

17          **A.**    It sounds like you've done the math  
18   correctly.

19          MR. KAMINSKI:  Your Honor, I would like to offer  
20   into evidence AG Cross Exhibits 6, 7, 8, 9, and 10.

21          JUDGE DOLAN:  You're not worried about 5?  5 was  
22   your hypothetical one.

1 MR. KAMINSKI: Oh, my apologies. 5 as well.

2 MR. BERNSTEIN: Still no objection.

3 JUDGE DOLAN: Okay. AG Cross Exhibit 5, AG

4 Cross Exhibit 6, AG Cross Exhibit 7, AG Cross

5 Exhibit 8, AG Cross Exhibit 9, and AG Cross

6 Exhibit 10 will be admitted into the record.

7 (Whereupon, AG Cross Exhibit Nos. 5 through 10 were

8 admitted into evidence.)

9 MR. KAMINSKI: Thank you. No further questions.

10 JUDGE DOLAN: Okay.

11 (Whereupon, a discussion was.

12 Had off the record.)

13 MR. GIORDANO: Thank you, your Honors.

14 CROSS-EXAMINATION

15 BY

16 MR. GIORDANO:

17 Q. Hi, Mr. Crumrine. As you know, I'm Pat

18 Giordano and I represent the Managers Association

19 of Chicago.

20 I'd first like to compliment you on your

21 -- the organization of your testimony. I think it

22 was pretty well organized and it makes it easy to

1 deal with, the various issues and address the  
2 issues the parties are concerned about.

3 And you know some of the issues we're  
4 concerned, so I'm going to ask you some questions  
5 about those.

6 Let me refer you first to your direct  
7 testimony, Page 32, Lines 718 to 719, where you --

8 MR. BERNSTEIN: I'm sorry, I didn't catch that  
9 reference, Page --

10 MR. GIORDANO: Page 32, Lines 718 to 719.

11 BY MR. GIORDANO:

12 Q. -- where you testified that a delivery  
13 company such as ComEd does not have costs that vary  
14 significantly according to the usage of the  
15 customer, correct?

16 A. That's correct.

17 Q. Now, did ComEd present any cost of service  
18 analysis segmented by the types of electric usage  
19 of ComEd customers to support this statement?

20 A. I think the engineering analysis that goes  
21 into and has gone into the embedded study in this  
22 case and in its three prior cases, is that



1 customers are served based on their demand and our  
2 embedded cost studies are performed based on that  
3 basis.

4 Q. But you didn't analyze -- your cost of  
5 service analysis did not -- had no analysis of the  
6 cost of service of the customers based on the end  
7 usage of those customers, correct?

8 A. It was not -- it is not necessary, no. We  
9 did not do it.

10 Q. And let me refer you to Page 38, Lines 804  
11 to 807 of your direct.

12 Now, you were proposing there the  
13 consolidation of four current nonresidential  
14 delivery service customer classes; and those would  
15 be one to three megawatts, three to six megawatts,  
16 six to ten megawatts, and over ten megawatts into  
17 one over one megawatt delivery service customer  
18 class, correct?

19 A. That is one aspect of that combination,  
20 yes.

21 Q. Well, you're proposing that consolidation,  
22 correct, of those four classes -- customer classes

1   into one customer class; is that correct?

2       **A.**   Assuming that you also include in that the

3   separation and segmentation of the high-voltage

4   customer that would have otherwise been in those

5   classes, but are now in the high-voltage class.

6   Yes, we are proposing to combine the remaining

7   customers into a single class.

8       **Q.**   Okay. Now, as we've established, there's

9   currently an over ten-megawatt customer class --

10   delivery service customer class in effect, correct?

11       **A.**   Yes, there is.

12       **Q.**   And you proposing to consolidate this into

13   the over one-megawatt class, correct?

14       **A.**   It's one of the four classes that would

15   make up the over one-megawatt class, yes.

16       **Q.**   And you're proposing then that the over

17   ten-megawatt customer be charged the same delivery

18   service charges as over -- as all over one-megawatt

19   customers, correct?

20       **A.**   That is the impact of combining them, yes.

21       **Q.**   Okay.

22       **A.**   Again, assuming with the clarification --

1 and I'll say it for the last time -- we're  
2 acknowledging the separation of high-voltage  
3 customers into a separate class.

4 Q. I understand that. Now, let me refer you  
5 to Page 38, Lines 100 -- Lines 810 to 812 of your  
6 direct where you indicate, don't you, that there  
7 are two reasons for ComEd's proposal to reduce the  
8 number of delivery service customer classes,  
9 correct?

10 A. Yes.

11 Q. And isn't it true that the first reason  
12 that you state is that the charges currently in  
13 effect for the classes that you're proposing to  
14 combine are very similar, correct?

15 A. That was a general statement that I made  
16 there, yes.

17 Q. Well, you made this specific statement,  
18 didn't you, on Lines 811 to 812 that first the  
19 charges currently in effect and approved by the  
20 Commission in Docket No. 01-0423 for the classes  
21 that were combined, they're very similar, correct?

22 A. Yes, that's correct.

1       **Q.**     Now, isn't it true that the current charge  
2     for the over ten-megawatt customer class, the  
3     distribution facilities charge, is \$2.34 per  
4     kilowatt?

5       **A.**     That's correct.

6       **Q.**     And isn't it also true that those  
7     distribution facility charges make up approximately  
8     98 percent of all charges under your delivery  
9     service tariffs, correct?

10      **A.**     I don't know about 98 percent, but it's a  
11     very high percentage.

12      **Q.**     I can give you the reference. It's in your  
13     testimony, the 98 percent?

14      **A.**     Then I'll accept it.

15      **Q.**     Okay. Thank you. Now, while the current  
16     charge for the over ten-megawatt customer class is  
17     2.34 -- \$2.34 per kilowatt, isn't it true that the  
18     current charge for the one to three-megawatt  
19     customer class is \$4.45 per kilowatt, a three to  
20     six-megawatt customer class is \$4.63 per kilowatt,  
21     and the charge for the six to ten-megawatt  
22     customer, is \$4.47 per kilowatt, correct?

1       **A.**     Those sound right, yes.

2       **Q.**     So it's true, is it not, that the current  
3 charge for the over ten-megawatt class is not  
4 similar at all to the charges for the three  
5 nonresidential customer classes that you're  
6 proposing to consolidate with the over ten-megawatt  
7 customer class?

8       **A.**     Well, Mr. Giordano, you've pointed out that  
9 in my direct testimony, which, by its nature, was  
10 relatively high level in brief, this is an over  
11 generalization that I'm sure we've clarified during  
12 the rest of the discussion between the rebuttal and  
13 surrebuttal.

14       **Q.**     But this was the primary rationale you  
15 stated in your direct testimony for comments  
16 proposed consolidation of your nonresidential  
17 classes? It's the first rationale that you  
18 mentioned, correct?

19       **A.**     It was the first rationale mentioned, it  
20 was not what I considered to be the primary  
21 rationale.

22       **Q.**     Okay. Well, let me refer you then to --

1 let me just ask one more question along those  
2 lines. No, I'll go on to another line.

3 On -- let me refer you to Page 44, Lines  
4 951 to 952 of your direct testimony.

5 A. Yes, sir. Can I have the line numbers  
6 again.

7 Q. 951 -- I'm actually going to refer to --  
8 Line 952 on Page 44 of your direct.

9 A. I have it.

10 Q. Okay. Now, you're testifying there that  
11 ComEd's proposed delivery service increases. As a  
12 result of those increases, nonresidential customer  
13 classes will see approximately a 24 percent  
14 increase in charges per kilowatt hour; is that  
15 correct?

16 A. That is the average of the average of all  
17 nonresidential classes on a per kilowatt-hour  
18 basis, yes.

19 Q. And these proposed increases are in  
20 addition to any increases that will or -- you know,  
21 that will occur when ComEd begins charging  
22 consumers supplied charges based on ComEd's auction

1 procurement method, correct?

2       **A.**     They are separate and apart. These apply  
3 only to the delivery portion of the bill.

4       **Q.**     Okay. So I want to refer you then later in  
5 this same exhibit on -- and the testimony Lines 956  
6 to 957, on the same page, where you testify that  
7 ComEd believes that any rate mitigation should be  
8 performed with respect to the total bill impact  
9 from both this proceeding as well as the  
10 procurement case and you go on that this issue is  
11 being addressed in the procurement case and does  
12 not also need to be addressed in this proceeding,  
13 correct? That is your testimony?

14       **A.**     That is my testimony, yes.

15       **Q.**     Now, isn't it true that the mitigation  
16 planned approved by the Commission in the  
17 procurement case was to limit the rate increases  
18 for any customer class to 25 -- 20 percent or  
19 50 percent of the class average, whichever is  
20 greater?

21       **A.**     That's an oversimplification, and it  
22 doesn't describe the classes to which it applies.

1 It also ignores the debate about which classes that  
2 it should apply to in the procurement case.

3           It's a correct statement as to the total  
4 bill impact that it was -- the limit that was  
5 proposed in the case, it was proposed by Staff and  
6 ultimately approved by the Commission, and it was  
7 approved to apply to a subset of customers.

8       **Q.** But it applied to the -- it applies to the  
9 nonresidential customer classes, correct?

10       **A.** Only to a subset of those classes.

11       **Q.** Well, you can explain who it applies to.  
12 Will you, please.

13       **A.** It applies to the -- what's known as the  
14 blended customers, which is a combination of the  
15 residential customers, the nonresidential customers  
16 in the watt-hour only, the small and the medium  
17 categories, as well as the various streetlighting  
18 classes.

19           Those are the classes that receive the  
20 three-year rolling -- or what we call the blended  
21 product from the auction. Those customers receive  
22 this mitigation mechanism within their -- amongst



1 themselves. The Commission explicitly excluded  
2 customers over 400 kilowatts from that type of  
3 mitigation plan.

4 And it also specified that within the  
5 residential and within the nonresidential classes  
6 under 400 kilowatts, that special consideration  
7 should be given to the residential space heating  
8 customers in that group, and the nonresidential  
9 space heating customers under 400 kilowatts.

10 Q. All right. Well, I appreciate that. Now,  
11 will you please explain what it means when it says  
12 "the mitigation is 20 percent or 150 percent of the  
13 class average, whichever is greater"?

14 A. What it means is for the group of customers  
15 who take service under the blended product, we're  
16 going to run an auction. We will know what the  
17 results are after the auction is completed. We  
18 will take the auction price, and we will convert it  
19 into rates and charges for the individual classes  
20 through the rate translation mechanism, something  
21 that was also approved by the Commission in the  
22 procurement case.

1                   We will combine the results of the  
2    auction, which being run in September, will be  
3    after the Commission's decision in this case. So  
4    we will know the delivery component and the  
5    commodity component. We will look at the  
6    percentage increase for all of those customers on  
7    average taken together.

8                   And if, for example, the customer --  
9    that group of customers, all the residentials and  
10   the nonresidentials under 400, that's average rate  
11   increase for that group as a whole is 10 percent,  
12   then the maximum increase that any subgroup can  
13   face is 20 percent because it is greater than  
14   150 percent of the class average. 150 percent of  
15   the class average is 15 percent, in that example.

16                  So it's the greater of the -- of  
17   20 percent or 150 percent of whatever the aggregate  
18   group of residential and nonresidential customers  
19   in the blended segment face after taking into  
20   consideration both of the delivery component and  
21   the commodity component.

22       **Q.**     Well --

1       **A.**     It's a total bill impact.

2       **Q.**     I appreciate that, but I'd like another  
3     hypothetical.

4                You testify that the average increase  
5     for nonresidential customer classes just from the  
6     delivery service increase would be 25 percent per  
7     kilowatt hour.

8                So let's assume -- and I'm not saying it  
9     will be, but let's assume the average increase for  
10    nonresidential customers from the two increases  
11    will be 40 percent.

12               Can you explain to me now how the  
13    mitigation plan will work in that particular case?

14       **A.**     No, I don't have enough information.  
15    You -- we have to understand what the total bill  
16    impact is for all the residential and  
17    nonresidential customers under 400 kilowatts. And  
18    the 25 percent that's referenced here is only  
19    25 percent on the delivery component. 25 percent  
20    only applies to part of the bill.

21               This rate increase will not increase  
22    nonresidential customer bills 25 percent in and of

1    itself.  It will only increase the delivery  
2    component 25 percent, which is only a portion of  
3    the bill.

4                   And I can't do a hypothetical for  
5    something that combines residential and  
6    nonresidential customers when I only have a  
7    nonresidential impact.

8       **Q.**    Well, let me ask it this way:  The  
9    mitigation plan does not mean that that class --  
10   customer classes will be limited to a maximum of  
11   25 -- 20 percent rate increases on all -- in all  
12   circumstances, correct?

13       **A.**    No.  The Commission approved -- explicitly  
14   approved a limitation of the greater of 20 percent  
15   or 150 percent of the class average.

16                   In that case, it was clear that if the  
17   class average increase exceeded 13.67 percent,  
18   that's the point where 20 percent and 150 percent  
19   of the class average are equal, the average  
20   increase exceeded 13 and two-thirds percent, the  
21   150 percent limitation would apply rather than the  
22   20 percent limitation.

1       **Q.**     And in that case, the rate increase for  
2     that class would be higher than 20 percent,  
3     correct?

4       **A.**     That's correct.

5       **Q.**     Okay.   Now --

6       **A.**     Well, excuse me.   I've got to be clear.   I  
7     just mentioned -- for certain subgroups within that  
8     class that's the limitation.   We're talking about a  
9     group of customers, some of whom will have rate  
10    increases below that 13 percent, some of whom will  
11    have it over 13 percent.   And it's the ones who  
12    actually hit the limit who have those revenues  
13    reduced and are paid for by the other customers.

14               It's a classic revenue allocation  
15    proposal that is done traditionally in rate cases.

16       **Q.**     Done traditionally in rate cases?   I mean,  
17    you don't recall any rate case where the -- the  
18    mitigation plan had such a high percentage, you  
19    know, 25 -- 20 percent or 150 percent of the class  
20    average, whichever is greater, do you?

21       **A.**     I wasn't talking with regard to magnitude.  
22    I was talking with regard to concept.   The concept

1 that keeps the Company whole, but limits rate  
2 increases to particular subgroups. That's the  
3 traditional rate-making technique and that's really  
4 all I meant by that comment.

5 Q. All right. Well, let's go to your  
6 rebuttal.

7 By the way, that reference it's right  
8 here on cross of distribution facilities making up  
9 approximately 98 percent of ComEd's delivery  
10 charges for its nonresidential customers, that's on  
11 your rebuttal Page 23 to 24, Lines 502 to 505. And  
12 you've already answered that that's -- you accept  
13 that.

14 So I'll go on to Page 25, Lines 527 to  
15 529 where you testified that the illustrative  
16 embedded cost of a service study indicates that the  
17 distribution facility cost for the over  
18 ten-megawatt and the one- to ten-megawatt class are  
19 virtually identical, correct?

20 A. That's correct. And the results were shown  
21 in Exhibit 24.2.

22 Q. But as you previously testified in my

1 cross-examination today, it's true that the  
2 high-voltage customers, those served at high  
3 voltage, were not included in that analysis of the  
4 comparison of the costs, correct?

5       **A.**     That's correct. That's why I made it clear  
6 that we have actually separated out the  
7 high-voltage customers into a separate class so  
8 that they can receive the appropriately lower  
9 charge.

10       **Q.**     And isn't it true that there's a much  
11 larger percentage of customers served at high  
12 voltage, that are over ten megawatts, than are  
13 between one and ten megawatts?

14       **A.**     I don't, as I sit here, know the  
15 distribution of the high-voltage customers. I  
16 don't -- the answer to your question is I don't  
17 know.

18       **Q.**     But you don't know that when customers use  
19 a higher amount of electricity peak, they're much  
20 more likely to be served at high voltage than if  
21 they're using less?

22       **A.**     I just said, I don't know the statistics.

1       **Q.**     But you know that that's true in general,  
2     correct?

3       **A.**     You're --

4       **Q.**     That's something you don't know?    Okay.  
5     You don't know?

6       **A.**     You asked me a specific question about the  
7     high-voltage class, and that's what I'm saying, I  
8     don't know.

9       **Q.**     Okay.   But you would believe that that's  
10    likely to be true, correct?

11       **MR. BERNSTEIN:**   Object.   He's inviting the  
12    witness to speculate.   He said he doesn't know.

13       **JUDGE DOLAN:**   Sustained.

14       **MR. GIORDANO:**   All right.   Fine.

15    **BY MR. GIORDANO:**

16       **Q.**     Now, let me refer you to Page 29 -- all  
17     right.   Let me refer you to Page 29, Lines 631 to  
18     633 of your rebuttal where you testified that, One  
19     also must remember that one of the goals of ComEd's  
20     approach is to simplify the rate structure such  
21     that administration of rates can be efficient,  
22     correct?



1       **A.**     That's correct.

2       **Q.**     In your opinion, has ComEd efficiently  
3 administered its rates to date?

4       **A.**     As best we possibly can, yes.

5       **Q.**     Let me then refer you to Page 32, Lines --  
6 skip that.   Page 33 of your rebuttal.

7                   No, Page 32, sorry, Lines 693 to 696  
8 where you state that, Brookover and Childress also  
9 claim that these customers -- and you're referring  
10 there to nonresidential space heating customers --  
11 would, quote, have no other option than being  
12 served under ComEd's standard rates, which would  
13 effectively eliminate the substantial rate discount  
14 they currently receive, correct?

15       **MR. BERNSTEIN:**   I'm going to object.   You're  
16 reading from a question.

17       **MR. GIORDANO:**   That's correct, and I want to ask  
18 him about the question.

19       **THE WITNESS:**   You read what you read correctly.

20       **BY MR. GIORDANO:**

21       **Q.**     Now, you're citing BOMA Exhibit 1.0 there,  
22 Page 10, Lines 223 to 225.   And I'd like to refer

1 you to the question that Mr. Brookover and  
2 Mr. Childress were asked in their direct testimony,  
3 and that states, Will nonresidential space heating  
4 customers continue to have a ComEd rate option that  
5 would provide these customers lower charges than  
6 ComEd's standard rates if ComEd's proposal is  
7 approved in this case?

8 I can show you that?

9 A. That would be helpful.

10 Q. (Tendering document.)

11 A. I'm sorry, I lost the question if there was  
12 one, Mr. Giordano. I'm at Page --

13 Q. Well, the question is, wasn't the question  
14 that Mr. Brookover and Childress were asked was  
15 whether or not ComEd nonresidential space heating  
16 customers would have a ComEd option other than  
17 being served under ComEd's standard rates?

18 A. That's what the question is, but the quote  
19 that I refer to is actually the answer, which I  
20 interpreted it differently.

21 Q. Okay. And you go on on the next page of  
22 your direct to state that, The customer's -- and

1 this is a reason you're stating for opposing the  
2 proposal, of Mr. Brookover and Childress to exempt  
3 nonresidential space heating customers from demand  
4 charges on nonresidential space heating and their  
5 delivery services tariffs.

6 And you state that you oppose that in  
7 part because the customers that BOMA represents  
8 comprise of potentially attractive market segments  
9 to retail electric suppliers that are seeking to  
10 retain or expand their market share, and that the  
11 BOMA people can go to -- have an option of going to  
12 the retail electricity suppliers, correct?

13 A. That's correct.

14 Q. Now, isn't it true that these retail  
15 electric suppliers have no ability to provide an  
16 appropriately charge for delivery of the  
17 electricity they provide?

18 A. Well, they don't charge for delivery in the  
19 first place, ComEd is the only party that charges  
20 for delivery.

21 Q. Right. So it's a monopoly on the delivery.  
22 This arrest is not an option for the delivery

1 service, correct?

2       **A.**     Other than very narrow exceptions provided  
3 for in the Act, as I understand it, in general,  
4 that's a very true statement.

5       **Q.**     Okay. So you also testify on Lines --  
6 Page 35, Lines 739 to 740, that it is true that  
7 ComEd does not keep separate records for many  
8 different uses of electricity, including electric  
9 space heating, correct?

10       **A.**     You read that correctly.

11       **Q.**     Now, does that mean that ComEd has never  
12 kept separate cost records for electric space  
13 heating?

14               I know never is a long time. We can  
15 limit it to your experience with the Company.

16       **A.**     Unfortunately, you haven't narrowed it down  
17 too much.

18               In my knowledge -- to the extent of my  
19 knowledge -- and I've been doing rate cost service  
20 analysis for over 20 years, which unfortunately is  
21 only part of my career -- we do not have separate  
22 costs analysis on the wires portion of the

1 business. Never done it in the -- since open  
2 access, and it is only done for commodity purposes  
3 when we were bundled and vertically -- and when  
4 inadvertently integrated utilities.

5 **Q.** Well, did ComEd prevent -- present a  
6 separate cost analysis for the cost of providing  
7 bundled service to electric space -- nonresidential  
8 electric space heating customers when it proposed  
9 its Rider 25?

10 **A.** I'm having difficulty answering the  
11 question. Rider 25 was actually proposed a very  
12 long time ago, even predating my time.

13 In cost studies that I've been familiar  
14 with, which date back to the '85 rate case, there  
15 was never a separate analysis for electric space  
16 heating on the wire side. There has not been one  
17 to date. And the engineering analysts are in the  
18 conclusion that we haven't. It's not necessary.  
19 We never did one. We've only differentiated it on  
20 the commodity side and we've only done it as part  
21 of the inadvertently integrated utility. We've  
22 never done it since we were a wires company.

1       **Q.**     Okay.   And despite that, that you didn't do  
2     that analysis, there was no demand charge in Rider  
3     25 for supply and delivery of electricity, correct?

4       **A.**     That's correct.   We recovered our costs in  
5     an energy-only charge for the Rider 25 in the  
6     eight, nine summer months.

7       **Q.**     And it's also true that ComEd has proposed  
8     its consolidation of customer classes in this case  
9     without doing a current cost study of the cost of  
10    serving ComEd's existing customer classes that its  
11    proposing to consolidate, correct?

12      **A.**     That's not entirely true.   We -- as I've  
13    shown in my direct testimony, we did some analysis  
14    on the residential side.   And in my rebuttal  
15    testimony, we did do a subsequent breakdown  
16    analysis of the -- on the over one-megawatt class  
17    subsequent to filing the original information in  
18    this docket and the results are in my rebuttal.

19      **Q.**     But you did not do a full study, a full  
20    cost of service study, of the cost of serving  
21    ComEd's existing customer classes; is that right?

22      **A.**     We did it for the classes that were an

1 issue, and that was all we needed to do. And we  
2 did -- the four classes we did it in, we analyzed  
3 different costs.

4 Q. But you're consolidating classes other than  
5 just the ones over one megawatt, aren't you?

6 A. That's correct. We did not have to revise  
7 those; nobody has challenged combining the very  
8 small customer classes. We did not do that. We  
9 relied on the embedded study that we had from the  
10 prior case to guide our cost information in that  
11 regard.

12 Q. So in your direct case, you didn't show a  
13 cost study of the cost of serving ComEd's existing  
14 customer classes, correct?

15 A. No, we didn't need to.

16 MR. GIORDANO: I'd like to move to strike  
17 everything after "no."

18 MR. BERNSTEIN: I object to that. He's entitled  
19 to a few words of explanation. The question was  
20 certainly not --

21 MR. GIORDANO: I think that was a yes or no  
22 question.

1 JUDGE DOLAN: We'll strike the rest after "no."

2 BY MR. GIORDANO:

3 Q. I'd like to move on to your surrebuttal  
4 testimony.

5 Well, before we do that, I think  
6 probably everybody those knows the answer to this,  
7 but I want to make it clear, you -- ComEd is  
8 proposing to eliminate Rider 25 -- and maybe you'll  
9 change your mind -- but the bundled rate is for  
10 electric space heating customers, correct?

11 A. That's correct.

12 Q. Okay. Now --

13 A. Excuse me, I should clarify, except for the  
14 purposes of being -- retaining the ability to meet  
15 the Commission's order in the procurement case to  
16 mitigate costs for the Rider 25 customers under 400  
17 kilowatts. That's part of the rate mitigation plan  
18 that the Commission approved for the blended  
19 customers. We discussed that earlier. And we made  
20 it clear that we will retain information for those  
21 customers as long as that mitigation plan stays in  
22 force.



1                   But the more general aspect is we are,  
2   as a service option from ComEd, eliminating --  
3   proposing to eliminate Rider 25.

4       MR. GIORDANO: I think I'd have to move to  
5   strike that as well. I mean, I was just asking a  
6   simple question whether they're proposing to  
7   eliminate bundled rate Rider 25. I mean, it's a  
8   yes or no.

9       JUDGE DOLAN: I'm going to overrule that. Just  
10   let it in.

11       MR. GIORDANO: All right.

12   BY MR. GIORDANO:

13       Q.   Now, ComEd's bundled rate Rider 25 is  
14   currently available to all ComEd nonresidential  
15   space heating customers, including new customers  
16   who heat their facilities with electricity, unless  
17   their customer class has been declared competitive  
18   by ComEd; is that right?

19       A.   And they're taking service under a rate to  
20   which Rider 25 applies. That's the only other  
21   adder I would apply. Typically Rate 6, 6L, Rate  
22   24, with that additional limitation that's correct.

1       **Q.**     And 6 and 6L are your primary  
2     nonresidential bundled rates, correct?

3       **A.**     Correct.

4       **Q.**     So has ComEd informed its customers who are  
5     constructing new facilities so they can consider  
6     this proposed elimination of Rider 25 in  
7     determining whether to install electric space  
8     heating equipment?

9       **A.**     As I sit here, I cannot tell you what  
10    discussions our design engineers have had when  
11    customers have approached them. I know we have  
12    communicated with our energy service reps that  
13    Rider 25 is proposed to be eliminated.

14               I cannot tell you, as I sit here, what  
15    every conversation or, you know, the majority of  
16    conversations with customers has entailed.

17       **Q.**     Now, let me refer you to your surrebuttal  
18    testimony. You testified there that BOMA's  
19    proposal is put plainly unfair to other  
20    nonresidential customers because they will have to  
21    fund BOMA's proposal, correct?

22       **A.**     That one I will need a page reference.

1       **Q.**     Okay.   Page 38, Lines 861 to 86- -- 863.

2       **A.**     That's a correct reading of what I said.

3       **Q.**     But isn't it true that acceptance of BOMA's

4   proposal would make the overall ComEd

5   residential -- rate increase for nonresidential

6   space heating customers similar to the percentage

7   rate increase for nonresidential, nonspace heating

8   customers?

9       **A.**     I don't know that.

10      **Q.**     You haven't analyzed it?

11      **A.**     We have not analyzed because, as you've

12   already pointed out, we have not done a separate

13   study that separated out the delivery costs for

14   space heating separate from nonspace heating, and

15   then combined that with an additional analysis to

16   find out what supply costs might be on average.

17   It's a very complex calculation that you don't do

18   just on the back of an envelope, and it's not

19   something that we've performed on a -- on an entire

20   Rider 25 customer base.

21      **Q.**     But you've read Mr. Brookover and

22   Mr. Childress' testimony where they testified that

1 acceptance of BOMA's proposal would make the  
2 overall ComEd rate increase for nonresidential  
3 space heating customers similar to the rate  
4 increase for nonresidential nonspace heating  
5 customers? You've read that, correct?

6 **A.** I have read it, yes.

7 **Q.** And you didn't challenge that statement,  
8 did you?

9 **A.** I believe at a point in my testimony, I  
10 specifically said that I wasn't going to challenge  
11 the numbers. That's really immaterial at this  
12 point.

13 **Q.** Are you aware that BOMA is comprised of a  
14 large number of both space heating and nonspace  
15 heating buildings?

16 **A.** That's my understanding, yes.

17 **Q.** And don't you think BOMA's better situated  
18 than ComEd to determine what rate design is fair to  
19 non- -- to space heating and nonspace heating  
20 buildings?

21 **A.** Not necessarily.

22 **Q.** Let me refer you to Page 30, Lines 663 to

1 666.

2                   You testify -- this is still  
3 surrebuttal -- in opposition to an across-the-board  
4 increase in DST rates. And one of the problems you  
5 mention is the split between -- this would result  
6 in having to incorporate the split between  
7 residential and nonresidential cost allocations  
8 based upon the embedded cost study filed in Docket  
9 No. 01-0423 for the 2000 test year, correct?

10       **A.**     That's the one thing that would perpetuate,  
11 yes.

12       **Q.**     Now, couldn't that problem be avoided by  
13 allocating an across-the-board percentage increase  
14 to your nonresidential customer classes based on --  
15 and then determining the split based on -- between  
16 residential and nonresidential based on your  
17 current cost study?

18       **A.**     Only if you wanted to ignore the whole rest  
19 of the problem with the nonresidential rate design  
20 that I'm trying to point out in this answer.

21       **Q.**     But it would address that particular  
22 problem, correct?

1       **A.**     It would address only the residential,  
2 nonresidential split as a total split. That's all  
3 it would address.

4       **Q.**     Now, let me refer you to Page 7, Lines 134  
5 to 137. In your surrebuttal, when you're  
6 testifying about an alternative proposal for the  
7 over ten-megawatt customer class -- you've made  
8 that in your surrebuttal testimony, correct?

9       **A.**     That's correct.

10      **Q.**     Now, you were proposing there to reduce the  
11 133 percent increase that you've proposed for over  
12 ten-megawatt customers only if the Commission  
13 accepts your 24-hour demand proposal -- that the  
14 maximum kilowatt demands be calculated on a 24-hour  
15 basis; isn't that correct?

16      **A.**     That's correct. We've got a proposal that  
17 links those two issues together.

18      **Q.**     So if that's not accepted, ComEd is not  
19 proposing anything to address this 133 percent  
20 proposed increase; is that correct?

21      **A.**     ComEd is proposing that the rates be set at  
22 cost, which is the result -- which is resulting in

1 that increase.

2 Q. Let me refer you to Page 38, Lines 8 -- no,  
3 I'm sorry. Line -- you state that ComEd's proposal  
4 is cost based -- and this is -- again, this is  
5 related to the nonresidential space heaters -- and  
6 provides that right pricing goes to customers who  
7 use the system efficiently.

8 A. I'm sorry. Did you say Page 38?

9 Q. I'm sorry. It's Page 40, Lines 894 and 7.

10 A. That's correct.

11 Q. Are you aware that most customers cannot  
12 practically and economically change their heating  
13 system to use another energy source other than  
14 electricity?

15 A. It's my understanding that it would be  
16 pretty prohibitively expensive to change to natural  
17 gas today, yes.

18 Q. So how do you propose that they respond to  
19 the price signals of much higher charges if they  
20 can't change their electricity -- I mean, change  
21 their method of heating?

22 A. I think customers have shown a tremendous

1 amount of creativity over the last few decades as  
2 energy prices, electricity prices, and gas prices  
3 have changed over time.

4 I am aware that many commercial  
5 customers use very sophisticated techniques to  
6 manage their demands using demand control. They  
7 pay very close attention to how they use their  
8 equipment. They have simultaneity with which they  
9 use their air-conditioning, their elevators, their  
10 lighting.

11 These are at least particularly in the  
12 larger buildings that I'm thinking of as I sit  
13 here. It's true for industrial customers. These  
14 are very smart people who know how to manage their  
15 demand when they're given a price signal to do so.

16 I did not suggest that the only way that  
17 they could manage and respond to that price signal  
18 is by completely changing out their entire heating  
19 system. I don't think that that would be a  
20 particularly prudent thing to do or a smart thing  
21 to do. I wasn't suggest that. I think there are  
22 things the customers can, should, and, perhaps,



1 continue to do what they're doing already to manage  
2 their demand and manage their building system.

3 And the price signals that ComEd has  
4 here would continue to encourage that.

5 MR. GIORDANO: I have nothing further.

6 JUDGE DOLAN: I would say that I thought if we  
7 finished in a reasonable time, I would keep going,  
8 but I think we're going to be here tomorrow anyway.

9 So I think we're just going to end here  
10 and continue tomorrow at 9:00 a.m.

11 (Whereupon, the above-entitled.  
12 Matter was continued to March.  
13 30th, 2006, at 9:00 a.m.)

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